

ENVIRONMENTAL PROTECTION AGENCY OVERSIGHT

HEARING BEFORE THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE NINETY-SEVENTH CONGRESS FIRST SESSION

OCTOBER 15, 1981

SERIAL NO. 97-H29

Printed for the use of the Committee on
Environment and Public Works



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U.S. GOVERNMENT PRINTING OFFICE

87-297 O

WASHINGTON : 1982

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ENVIRONMENTAL PROTECTION AGENCY OVERSIGHT

THURSDAY, OCTOBER 15, 1981

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, D.C.

The committee met at 10:12 a.m., in room 4200, Dirksen Senate Office Building, Hon. Robert T. Stafford (chairman) presiding.

Present: Senators Stafford, Chafee, Simpson, Abdnor, Randolph, Bentsen, Burdick, Hart, Moynihan, Mitchell, and Baucus.

OPENING STATEMENT OF HON. ROBERT T. STAFFORD, U.S. SENATOR FROM THE STATE OF VERMONT

Senator STAFFORD. The Committee on Environment and Public Works will please come to order.

We welcome you, ladies and gentlemen, to this hearing. As I look at the committee room, I want you to know we have made strenuous efforts to get a larger room for today and that the staff has rearranged the room so it will hold more people than formerly, but it still reminds me of some ski lifts in Vermont that can't quite handle the crowds over the weekend but are much too big for the crowds the rest of the time.

I am particularly happy to welcome you here, Mrs. Gorsuch. Mrs. GORSUCH. Thank you, Mr. Chairman.

Senator STAFFORD. For the committee, we all appreciate the fact that you are here.

Since the Environmental Protection Agency was created 11 years ago by President Nixon, we—by that I mean the Congress as a whole, but especially this committee—have enjoyed a special relationship with the Agency and its Administrators. The Agency's officers have always been welcome here, even when their views diverged from those of the committee members.

I expect that this may be another of those occasions where divergent views are expressed. But let me assure you that a difference of opinion does not mean you are unwelcome. On the contrary, an honest exploration of disagreements will help all of us by clearing the air. One purpose of this hearing is to explore some of those possible differences in opinion.

An equally important purpose, however, is to provide you with the opportunity to set the record straight. One of the great problems the committee has encountered in the past few months is a lack of information as to happenings at the Environmental Protection Agency. In the absence of this information, we have necessarily relied on press accounts. Quite frankly, it was the information

contained in those reports which led several members of the committee to request this hearing.

Undoubtedly you are more keenly aware of those press accounts than I am. But the picture they paint is grim to a Senator who has committed more than a decade of his career to laws intended to protect the sick, poor, and elderly by assuring them of healthful air and water. Morale is said to be the worse in Agency history. Attrition is said to be 1 percent per month. The scene which these reports depict is of an agency in agony, with its senior officials under seige.

It is painful for me to say that. But we will gain nothing here by refusing to acknowledge that these reports exist. For all we know, the press accounts may be based on nothing but wild rumor. I know that you believe them to be misleading at best and flatly false at worst. Since I know from personal experience that one of the early victims of reporting can be accuracy, this is our attempt to provide you with a forum to set the record straight and clear the air.

I hope, however, that you will do more than reply to charges. I know that many members will discuss these press reports with you. But your time would also be well served in telling the committee of your positive intentions at the Environmental Protection Agency. Even if the wildest of the budget-cutting accounts are true, you will still be left with a billion dollars and thousands of employees. The truly important question is how you intend to deploy those jobs and dollars in the best way. Our job—yours and mine—is to preserve an environment that is fit for the millions of Americans whose happiness and very lives depend on it. It is not so important how we protect the health of our children or the elderly, but whether we do so. And that is the real question at issue here. I hope you will answer it and the many others so, as I said, you can set the record straight.

Knowing you as I so, I suspect you may seize upon it as an opportunity to set a few Senators straight as well.

I believe that during the course of this hearing questions will be put to you regarding virtually every area of the Agency's operations. One specific area of concern is certain to be the impact of proposed budget and staff reductions at the Environmental Protection Agency.

We know that the staff and budget of every Federal agency are being reduced. The impact of these across-the-board reductions is a matter of great concern. Of greater concern, however, is the fact that as the Administrator of the Environmental Protection Agency you have reportedly volunteered additional reductions which vastly exceed those required of your sister agencies. These proposed reductions are said to approach 40 percent.

In the normal course of events, the Members of the Senate learn of budget proposals in January. But these are not ordinary times. That may explain why a document which appears to be a copy of the Agency's budget submission has been leaked to major newspapers, other media and members of this committee.

That document may or may not be the budget which you submitted to the Office of Management and Budget. Whether it is or not, I have no question that some members intend to question you

concerning its contents. In the view of those members, the recommendations which that budget contains are directly relevant to how the Environmental Protection Agency—and more importantly, the clean water, clean air, and health of this country's citizens—will fare under your stewardship.

I, personally, do not believe that the Environmental Protection Agency can continue to function if its staff and budget are cut so drastically. Decreases of such magnitude could amount to de facto repeal of some environmental laws. We would do better to repeal these laws outright than to leave them on the books as empty shells. To make these laws unenforceable because of a de facto repeal achieved through cuts in money and people would be, in the opinion of this Senator, to perpetrate a cruel hoax on the American public.

It may be that as a nation we can no longer afford some of these laws. But if that is the case, the proper course of action is to repeal them outright. If de facto repeal is either the intention or the consequence of the proposed budget cuts, I trust that recommendations for repeal of specific laws or provisions will be forthcoming from either the Environmental Protection Agency, the Office of Management and Budget, or the White House itself.

As the hearing progresses, we will have the opportunity to amplify these and other issues. Speaking only for myself, I expect the questions to be difficult and at times pointed, but petty or spiteful. It is certainly my intention as chairman of this committee to assure that the hearing is conducted so that we shed the maximum amount of light and the minimum amount of heat on the emotional subjects at hand. I do, however, expect questions which are fair, but tough.

These issues are important to all of us, as they are to the American people. For us to engage in anything less than an absolutely candid and honest exchange would be a disservice to the hundreds of millions of American men, women, and children protected by these laws and program.

Thank you again, Mrs. Gorsuch, for being here.

At this time I would be pleased if the ranking minority member, my partner for so many years, Senator Randolph, cared to make an opening statement.

OPENING STATEMENT OF HON. JENNINGS RANDOLPH, U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Senator RANDOLPH. Thank you very much, Mr. Chairman.

I would like to share with all of you the fact that the able chairman of this committee who for so many years has been a member of this committee has announced that he will be a candidate for reelection in the State he so well represents. I congratulate you very, very much. If all goes well, I will still be with you a few months.

Senator STAFFORD. I hope for years.

Senator RANDOLPH. Thank you.

Mr. Chairman, I welcome this opportunity for committee members to review with Administrator Gorsuch the operation and future funding prospects of the Environmental Protection Agency.

It has been nearly 6 months since we had the privilege of discussing matters of mutual concern with her in the formal setting of a committee hearing. Much has taken place since then that requires our attention so that we can move forward on legislation with a full understanding of how the Agency is being organized and equipped to carry out the programs we develop.

On September 30, I wrote to Chairman Stafford to share with him some concerns expressed to me by other members and reported in the press. I said then, and I emphasize now, that I recognize the right of any administration to carry out programs in a manner consistent with its general philosophy, to the extent allowed by law. That right certainly extends to this administration and to the environmental laws that have been developed over the past 15 years. But there are concerns that reductions in agency resources, if true, might impair the ability of EPA to carry out the basic requirements of law.

I would like, Mr. Chairman, without objection, to make that letter a part of the record.

Senator STAFFORD. Without objection, so ordered.

[The letter referred to follows:]

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, D.C., September 30, 1981.

HON. ROBERT T. STAFFORD,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, D.C.

DEAR BOB: Several minority members of the Committee on Environment and Public Works have expressed to me their concerns about recent events involving the Environmental Protection Agency and how they might affect its ability to carry out congressionally mandated programs. They have asked me to relay them to you and to suggest that our Committee exercise its oversight authority to help deter a potentially unfortunate situation before it gets out of hand.

Some of the problems at EPA were discussed in front page articles in *The New York Times* on September 29 and *The Washington Post* on September 30. The articles reported a proposed substantial reduction in funds and personnel for the Agency at a time when additional responsibilities seem to indicate that resources should be increased or, at least, remain at existing levels. The information in the newspaper articles is consistent with that obtained independently by Committee staff.

A week ago two high level EPA officials resigned after only a few months on the job. Both of these individuals held the newly created position of associate administrator. These were described to us as staff positions by Administrator Ann Gorsuch when she announced the reorganization of EPA in June although there have been reports that they have been making policy decisions.

Another matter for concern is the absence of confirmed personnel in four of the six assistant administrator positions. Two have been confirmed, and a third is pending in the Senate. Vacancies in these offices have existed since early this year. This situation is certain to affect the ability of the agency to carry out its mission.

We recognize the right of any Administration to implement programs in a manner consistent with its general philosophy so long as it is within the bounds of law and to appoint sympathetic individuals for this purpose. We are concerned, however, when conditions within an Agency prevent it from functioning in a professional, effective way.

There are signs of organizational deterioration at EPA, however, which should not be permitted to develop further.

We are prepared to work with you in determining the facts of the situation at EPA either through informal conferences or the hearing process. This situation is of such concern that it may be advisable for the Committee to defer the development of new environmental legislation until we determine if the Agency has the ability or the will to carry out these programs.

With best regards, I am

Truly,

JENNINGS RANDOLPH,
Ranking Minority Member.

Senator RANDOLPH. Throughout this period the relationships of the EPA and the Congress have been carried out in a bipartisan way. EPA was created by a Republican President and Presidents of both parties have worked with what until this year was a Democrat-controlled Congress. The results, I believe, are reflected in the substantial progress we have made in reducing the pollution that enters our air, our water and our landscape.

Laws to control air and water pollution and solid waste have been on the books for several years. Recent modifications have been enacted particularly with respect to hazardous materials which are becoming recognized as a growing threat to public health. In particular, the superfund law and amendments to the Solid Waste Act, both enacted less than a year ago, are just beginning to be implemented.

If these efforts are to be effective, there must be adequate resources to carry them out, and this implementation must have a sound technical base. We have read and been told recently that substantial reductions in personnel of up to 40 percent and overall funding at a similar level are being planned at the Environmental Protection Agency. I hope that Mrs. Gorsuch will discuss the funding prospects with us and, if they are accurate, how she plans to organize the Agency to carry out its important responsibilities.

We are also concerned about the absence of appointments to high level positions in the Agency. Of the six Assistant Administrators, only two are on the job. A third Assistant Administrator was recently nominated by the President. We will hold a hearing on that nomination tomorrow. I believe members would like to know if there have been problems in finding qualified people for these positions and whether we can expect these important jobs to be filled soon.

There have been reports of mistrust of senior career personnel at the Agency by top-level administrators and of a developing split along those lines. This situation, if the reports are correct, could have no result but to stifle EPA's ability to carry out its mission.

Mr. Chairman, the relationship between this committee and the Environmental Protection Agency has always been close and cooperative. There have been occasions when the committee or its individual members have disagreed with EPA. But on many occasions, we have been able to work together to reach a satisfactory resolution of our differences.

On a personal basis, I have spent many hours in conferences with EPA officials about problems in the State of West Virginia. In virtually every instance, the results have been such that further progress toward pollution abatement was carried out without imposing impossible demands on individuals and industries in my State. The same is true of the legislative process in which we have

been able to fashion realistic and workable laws through the dialog of give and take and the exchange of ideas and viewpoints.

Mr. Chairman, I see no reason why this process cannot continue under Administrator Gorsuch who has already become known for her energy and straightforward approach toward problem solving. That is why I welcome this hearing, for it gives us an opportunity to establish a record with her directly rather than to rely on secondhand information and speculation.

Mrs. GORSUCH. I welcome you back to the committee and look forward to counseling with you today.

Thank you, Mr. Chairman.

Senator STAFFORD. Thank you very much.

Senator Chafee?

Senator CHAFEE. Mr. Chairman, I am looking forward to Mrs. Gorsuch's testimony and getting to the questions.

Senator STAFFORD. Senator Baucus.

OPENING STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM THE STATE OF MONTANA

Senator BAUCUS. Thank you, Mr. Chairman.

I, personally, want to thank you for holding these hearings. I think it is essential we address the questions. That is the purpose of these matters. I hope this hearing will not be seen as a mere meddling in the Agency's business because, in my view, it is not. Quite the contrary. EPA is the committee's business. From the Clean Air Act to superfund, EPA's marching orders were issued by this committee and by the Congress with the expectation that they be carried out.

More important, the work which EPA does is the Nation's business. Helpful air, clean water and land free of cancer-causing chemicals are not just topics for pleasant dinner conversation but they are the birthright and deserve appropriate dedication of financial resources.

I am pleased Mrs. Gorsuch has agreed to testify because I know this is the sentiment she shares. I recall her statement of May 1981 when she said, "The President is committed to the preservation and enhancement of environmental values, and that is a commitment that I share."

Unfortunately, reports which have reached this committee in recent weeks indicate this commitment to principle may not be matched with a commitment to budget. Proposed cuts of 20 percent being volunteered by the Agency before OMB has even had a crack at the fiscal 1983 budget is disheartening. Certainly every department and agency has deadwood and needs pruning. However, budget reductions which spell dismissal of up to 40 percent of the staff is clearcutting, not pruning.

This is particularly disturbing to me because after a decade of groping our way through an environmental morass we finally have a structure in place which will work to protect the public's health. We have addressed air pollution and contaminated water. We have mandated the identification and control of toxic substances. We have provided for the cleanup of hazardous wastes. If the budgetary props are pulled out from beneath these programs now, we

can wave goodbye after a decade of progress toward protecting the public health and welfare.

There simply is no one else to shoulder the burdens. State officials in Montana, for example, have already told me that CPA cutbacks will "endanger clean air and clean water."

While I am anxious to hear from Mrs. Gorsuch of EPA's progress in improving Agency efficiency, I am hopeful the very existence of this hearing will serve as a warning flag to the administration further crippling budget cuts place them on dangerous ground. Playing with the public's health in the name of regulatory reform cannot be tolerated.

Thank you, Mr. Chairman.

Senator STAFFORD. Thank you very much, Senator.

Senator Abdnor?

OPENING STATEMENT OF HON. JAMES ABDNOR, U.S. SENATOR FROM THE STATE OF SOUTH DAKOTA

Senator ABDNOR. Thank you, Mr. Chairman.

I, too, want to welcome Mrs. Gorsuch, our distinguished EPA Administrator, to our session this morning and thank her for the courtesy in appearing before the committee on such short notice.

I want you to know, Mrs. Gorsuch, I, for one, have been greatly impressed with the goals and objectives you have articulated in your first few months at EPA, and particularly in your efforts to resolve many of the problems that State and local governments have experienced in dealing with the enormous number of regulations promulgated during the previous administrations.

In Idaho, for example, in the transition of the State air program, I know your efforts with the State's congressional delegation, with the State of Idaho, were instrumental in coming up with a final memorandum of understanding about the level of pollution control spending that would be required over the next five years.

I know you have also moved ahead to give your Regional Administrators and their staffs more input into EPA headquarters. I think that is great. That is where it belongs. I do applaud those efforts.

I think for too long the Federal bureaucracy has failed to consider unique State and regional differences. Certainly no national regulation, unless it becomes extraordinarily complex, can deal with State problems as effectively as State programs. At least I find that is true in South Dakota. The EPA can have a tremendous impact on States, especially the Western States with particular problems, and problems which sometimes don't occur in the East. An Administrator who is willing and ready to consider the problems of the States and delegate more authority to State programs, as far as I am concerned, is more than welcome.

Like many of my colleagues, I do not believe that the EPA's well-being and health are necessarily reflected in the size of its budget, nor in the number of its employees. Rather, EPA, like all other Federal departments and agencies, should be judged by the results of its actions.

Now that is our job here. This committee is tasked with oversight of EPA in the implementation of environmental programs. We have the responsibility to assure that EPA does indeed carry

out its statutorily mandated duty, and, Mr. Chairman, I think you have done an excellent job, as has our ranking minority leader and former chairman, in doing that through the years. I think they have been very faithfully carried out.

But, according to the invitation, as I understand it, Mrs. Gorsuch has been invited to testify about a projected budget for 1983. Officially the President doesn't even present a budget to us until January, and he is the man that has the final say and I think runs the whole ship. I always believed that to be the case. It certainly holds true where agricultural programs are concerned. A lot of us would like to see more money for agriculture and yet the President and OMB have something to say about fiscal year 1983 funds for those programs. We haven't heard anything official from him with respect to next year's budget, we have heard a number of rumors.

I know the members of the Budget Committee, and the Appropriations Committee, of which I am a member, are still trying to figure out what we are going to do in terms of fiscal year 1982. We are concerned about some of the cuts we have to make for the current fiscal year.

I don't think OMB or Mrs. Gorsuch or anyone else has any final figures available at this early date, and if such figures were available she would be required not to offer them. I don't think the President or Mr. Stockman would appreciate that before the Administration's budget is prepared.

In a recent article from a New York newspaper Brian Nelson, chief spokesman for the Environmental Protection Agency, said, "We must emphasize all of the figures are very preliminary. The Administrator has not signed off on them and some of them she hasn't even seen."

So I don't know what we are supposed to be discussing. I am wondering what this hearing is intended to accomplish. We are not the Appropriations Committee. We are not the Budget Committee. And I don't think the Administrator can testify to the figures which have appeared in the newspapers, and I don't know whether she ought to.

I hope my colleagues will consider these facts as we progress here. Our job, our responsibility is to weigh the programs, not pass judgment on the compilation of numbers released by those who are dissatisfied with the change in direction at EPA, who apparently think little of subverting the budget process. I hope we are here to have a true oversight hearing and not to just give credence to a bunch of rumors circulated by former EPA employees who are dissatisfied with the policies of this administration. We have a duty to see that EPA carries out congressional mandates. That is what we should be thinking of.

Before I conclude, I would like to welcome you here and tell you that you are doing a fine job.

Thank you, Mr. Chairman.

Mrs. GORSUCH. Thank you, Senator.

Senator STAFFORD. Thank you very much, Senator Abdnor.

If you heard my opening statement, we are here to give Mrs. Gorsuch a chance to put rumors to rest, if she wishes to do so.

Senator Mitchell?

OPENING STATEMENT OF HON. GEORGE J. MITCHELL, U.S.
SENATOR FROM THE STATE OF MAINE

Senator MITCHELL. Thank you, Mr. Chairman.

I join with you and the other members of the committee in welcoming Mrs. Gorsuch here. I share the concern expressed by you, Mr. Chairman, and some of the other members of the committee about the need for vigorous and effective enforcement of our national laws protecting the health and safety of the American people and the quality of the American environment.

There are many areas of public policy in which the American people are divided. But one important area in which there is a clear and overwhelming national consensus in this country is the need to protect and enhance the quality of our environment.

In the lifetimes of almost everybody in this room we have seen two Americas: The first a nation of dirty water, of foul air, of virtually unrestrained emissions of pollutants and toxic substances. The second, in just the past few years, has been a nation in which we have effectively begun the long and expensive process of cleaning up our water and our air, of restricting the emission of pollutants and toxic substances.

By overwhelming margin, by every standard of measuring their views, the American people support recent efforts to protect our environment. They want effect and vigorous enforcement of the laws.

There have been a number of important laws enacted in recent years as we as a nation have come finally to understand and appreciate the dimensions of the problem. In just the past decade, 1970, we passed the Clean Air Act; 1972, the Clean Water Act and the Noise Control Act; 1974, the Safe Drinking Water Act; 1976, the Resource Conservation and Recovery Act; also in 1976 the Toxic Substances Control Act; in 1977, amendments to the Clean Water Act; in 1980, the superfund legislation. All of these are within the responsibility of the EPA.

When you assumed your present office, Mrs. Gorsuch, you swore a solemn oath to discharge the duties of your office, and we know you appreciate the significance of that. Foremost among those duties is the obligation to enforce and execute the laws within your jurisdiction. That is your moral obligation. That is your legal duty. I, frankly, am skeptical you will be able to meet that obligation and discharge that duty if funding and the personnel of your agency are to be cut as drastically as it has been reported that you are proposing to cut.

I look forward to hearing from you directly today, to provide us firsthand with a statement of your plans and an explanation of your proposals so that we can separate fact from fiction, rumor from reality, and we, as well as you, can move toward the common objective which we all share—a safe, healthy and clean America.

Mrs. GORSUCH. Thank you, Senator.

Senator STAFFORD. Thank you very much, Senator Mitchell.

Senator Hart is expected shortly and we will place his opening statement at this point in the record.

[The statement follows:]

**OPENING STATEMENT OF HON. GARY HART, U.S. SENATOR
FROM THE STATE OF COLORADO**

Senator HART. Mr. Chairman, as one of the members who first proposed this hearing, I congratulate you on your decision to hold this oversight hearing. Before the committee continues its action on the Clean Air Act and the other business before us, it is appropriate that we examine how well EPA is performing its functions. This would be appropriate under any circumstances, since no law can be better than the agency which carries it out.

Examining EPA's workings is especially appropriate now, however. The new administration has been in office for almost 9 months, and should be well organized by now. Instead, however, there have been persistent reports of disorganization at EPA. These reports are based on—

The recent resignations of two of the three Associate Administrators who were appointed to improve the Agency's management;

The failure so far of the administration to nominate people to fill three of the six Assistant Administrator positions;

EPA's proposed budget for fiscal year 1983, recently leaked to the press, which includes plans for fire more than 3,000 Agency employees and to cut the Agency's operating budget effectively in half;

Widespread reports that policy at EPA is being made with no participation by the Agency's professional staff; and

Reports in the press that mass transfers of the Agency's top career professionals are being planned.

Taken as a whole, these items raise the fundamental question of whether EPA will be able to function effectively. Before we pass a new Clean Air Act, we should determine whether there will be an agency capable of carrying out whatever law we pass.

As we begin this examination, it is helpful to keep in mind the state of the Agency which Mrs. Gorsuch inherited. The Agency, created by President Nixon, was often criticized in its early years as having more enthusiasm than expertise. In recent years, however, EPA has come to be regarded as one of the relatively more effective Federal agencies. Even with the improvements of recent years, though, EPA has often been unable to carry out the responsibilities given it by Congress. For example, I've conducted a quick review of some of the more precise directives to the Agency included in the 1977 amendments to the Clean Air Act. These include—

A requirement that EPA decide by August 1978, whether to establish a new short-term air quality standard for nitrogen dioxide—but the Agency has not determined whether or not to set the standard;

A requirement that EPA review four substances (radioactive pollutants, cadmium, arsenic, and polycyclic organic matter) to determine whether they should be subject to either air quality standards or hazardous emission standards—but the Agency has only completed two of these four reviews;

A requirement that EPA review by December 1980, all existing air quality standards—but the Agency has still only revised one standard;

A requirement that EPA approve or disapprove new State implementation plans within 6 months after they are submitted—but the Agency completed only 1 of the 51 plan reviews on time;

A requirement that EPA impose by August 1979, noncompliance penalties on all stationary sources violating air quality standards—but the Agency so far has served notice of noncompliance on only a few sources, and has not imposed penalties on any;

An authorization for separate high-altitude emission standards beginning in 1981—but the Agency did not establish the standards in time for them to take effect before 1982;

A requirement that EPA report to Congress by October 1978, on the economic impact and technological feasibility of the 1984 high-altitude emission requirement—but the Agency has not made the report;

A requirement that EPA report to Congress by August 1978, on the advantages and disadvantages of establishing a new system of economic incentives to control nitrogen oxides from stationary sources but the Agency has not made the report;

A requirement that EPA report to Congress by August 1979, on economic incentives as a means of pollution control—but the Agency has not made the report;

A requirement that EPA report to Congress by January 1979, on the public health and welfare effects of odors—but the Agency has not yet made the report; and

A requirement that EPA, in conjunction with the Department of Labor, report to Congress, by August 1978, on the effect of the Clean Air Act on employment—but the Agency has not yet made the report.

Mr. Chairman, this is not intended to be a comprehensive list. But it does help to point out that—even with higher levels of staffing and funding than those now being considered in the administration—EPA has had difficulty fulfilling its congressional mandates. I'm pleased to see from Mrs. Gorsuch's statement that major efforts are underway to improve the efficiency of EPA operations. But these efforts won't do much good if the reports are true that the EPA professional staff is being excluded from policymaking, that the Agency's staff is being cut by one-third, and the Agency's operating budget is being cut by almost one-half. If these reports are true, and EPA is being robbed of its current effectiveness, then we will all suffer. Industry will suffer, because EPA inefficiency would just produce even more regulatory uncertainty and litigation. The general public will suffer, because EPA inefficiency would prevent the cleanup of pollution and toxic chemicals that threaten our health.

Senator STAFFORD. And now, Mrs. Gorsuch, we are more than happy to invite you to make a statement to the committee if you wish.

STATEMENT OF HON. ANNE M. GORSUCH, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY

Mrs. GORSUCH. Thank you, Mr. Chairman, and thank you members of the committee. I am delighted for the opportunity to visit

with you this morning and discuss in general terms the outlook for the Environmental Protection Agency and our continuing commitment to fulfill EPA's congressionally mandated responsibilities.

As you know, the President has proposed a 12 percent cut in fiscal year 1982 spending for the majority of Federal departments and agencies, and indicated that further reductions will be necessary in fiscal year 1983, as well as a proposed cut of 75,000 in Federal employment by 1984, with the goal of a balanced budget by 1984. EPA is a part of the Federal Government and has not been excepted from those budget reductions. Obviously, there will have to be spending and personnel reductions for us to meet the requirements set by the President. We are required to meet those requirements and intend to do so in the way which best allows us to meet our responsibilities.

At the same time, while I appreciate the opportunity you have provided to clarify EPA's goals and objectives, because the budget process is complex and ongoing, it is not possible for me to comment on any numbers for the fiscal year 1983 budget and their specific impact at this time. Since the final version of that budget will not be available, as Senator Abdnor pointed out, until very shortly before the President presents it to Congress next January, my comments will have to be more general in nature and address our goals for the future, the problems we have faced in the past year, and our accomplishments.

As I have indicated before, EPA has three paramount responsibilities: (1) the protection of public health and welfare and of the quality of the environment; (2) the faithful implementation of the intent of Congress as expressed in statute; and (3) the development of policies and procedures to implement the intent of Congress consistent with the objectives of the President.

In carrying out these responsibilities, EPA needs greater concentration on those regulations, policies, and programs which are clearly required to protect the public health and environment, and greater emphasis on efficient use and allocation of its resources. Applied correctly, I firmly believe that the administration budget decisions will enhance our basic mission, and in fact will enable us to concentrate on the most important aspects of environmental protection and to move away from regulation for the sake of regulation—to put aside confrontation for the sake of confrontation.

As a number of studies have indicated, EPA has had problems in many areas, ranging from backlogs in construction grants to unanswered or overdue congressional correspondence. And while we have made significant progress in resolving many of them, problems which have been building for years will not and cannot be solved overnight or even in the first 6 months of a new administration.

With the diverse and significant responsibilities EPA has, the key to the effective and wise use of resources is, I believe, good management. Yet, frankly, this is exactly what EPA has not had for years. The health of the environment and the progress the Agency did make seems to have been measured more in terms of how much money was spent, how many scientists and administrators were hired, and how many regulations were issued. Very little thought seems to have been given to whether the money was spent

wisely or effectively, whether or not regulations were accomplishing their intent, whether additional employees were necessary, or whether the environment benefited.

With this in mind, I would like to describe problem areas which I inherited and outline our progress to date.

One of the most challenging and important aspects of managing the Agency today and in the years ahead is to insure that resources are concentrated on programs producing the greatest environmental benefits. While the Agency can and must fulfill its congressional mandate, with reduced funding, that will occur with better management.

The most important new initiative in this regard is the development of a new accountability system that will track each Agency senior manager's performance according to predetermined goals and output levels. This system is modeled on quality assurance programs successfully used today in the private sector.

Each Assistant Administrator, Regional Administrator, and key manager will be individually tracked and measured against specific operating objectives. The objectives are based on the major goals I have established for fiscal year 1982 concerning delegation of authority to the States, improving Agency management, reducing backlogs, controlling hazardous wastes through the implementation of Superfund and RCRA, reviewing regulations, and improving the quality of the Agency's science.

Such accountability will lead to better coordinated policies and improved results with fewer resources.

To say that no comprehensive plan of administration existed at the Agency would be a polite description of the chaos that existed in many parts of it.

Among others, existing problems were the lack of a realistic cash management system, more than 450 computer operators and 37 ADP staffs, with more on-line computer capability than any civilian agency in the Federal Government, paperwork alone for some contracts taking 6 to 8 months, and the burdensome forms required for EPA grants.

The Office of Administration is now undertaking a number of specific programs to remedy these shortcomings. Currently in progress are programs for improved cash management, for better use of more than \$50 million annually in ADP equipment and programs, including a reduction in unnecessary on-line storage, a pilot program with Delaware which will reduce the paperwork in State grants programs by 40 to 50 percent, and an improvement in the contracts procedures to simplify the process while tightening the oversight of contractor costs and performance.

This administration inherited a truly deplorable situation in the area of correspondence management and control. The Agency's responses to inquiries from Members of Congress, State and local officials, the business community, and private citizens were frequently delayed for months, were poorly drafted grammatically, and, worst of all, were substantively inadequate. Questions asked of the Agency were often not answered, or were not addressed adequately. We have found that records, even records systems for correspondence, are sketchy, and in some cases, apparently did not exist.

We believe that direct, accurate, and timely responses to inquiries about the Agency and its programs is a critical responsibility of the Agency in communicating its mandated mission from Congress and carrying out that mission. To address this need, we have developed new correspondence management procedures that have produced substantial improvement in the process.

While we cannot promise instant improvement, we are placing a continuing emphasis on our responsibility to insure timeliness and responsiveness.

My early studies of the Agency indicated that the Agency's basic organization and utilization of employees was neither efficient nor fully effective in carrying out its assigned functions, and later and more detailed efforts have supported that finding.

For example, roughly 26 percent of all EPA personnel are engaged in administrative duties, support duties, a percentage we believe is too great. The total number of EPA employees grew from 10,822 plus in September 1977 to a level of 12,346 in September 1981.

While the average GS grade Governmentwide is 8.24, up from 8.01 in 1976, the average Agency GS grade is 9.75, up from 9.29 in 1976. In July 1981, of the 303 SES positions, there were 44 deputies, 8 associates, 9 assistants, and 19 special assistants.

On a Governmentwide basis, only 3.5 percent of all GS employees are GS-14's or above, but 15 percent of EPA's employees are above that level.

As a more specific example, of the 230 headquarters personnel in the Office of Research and Development, more than 31 percent are at the GS-15 level or above. For the most part, these are not the scientists who do the work, but management people, and while there may be good and sufficient reasons for such numbers of high-level personnel, when less than 7 percent of the actual laboratory personnel are above GS-14, I think you would agree that these figures raise serious questions.

Another aspect of the same problem was the fact that performance standards and job descriptions for employees, in most cases, seldom matched the jobs or the individuals holding them, and in some cases, did not even exist.

With these facts in mind, the initial headquarters reorganization was designed to assure a consistency of approach and to focus more attention on the effective management of the resources and particularly of people. The second step in this process is the ongoing position management review being conducted by the office of administration, which will identify those positions not critical to the real work of the Agency and recommend other necessary changes in staff levels and personnel organization.

In the specific program areas, longstanding problems are also abundant, and I would like to touch upon a number of them, although this brief discussion is certainly not meant to be all-inclusive.

In the area of enforcement, we have completed an inventory of cases pending at the Department of Justice, either filed or awaiting filing. We found a backlog of 442 cases, some referred as long ago as 1977. Working with the Justice Department, we have so far identified 43 cases which no longer merit any prosecution.

The old system succeeded admirably in maximizing time, energy, and paper expended while minimizing case management. Cases were developed in a regional office, with a litigation package sent to headquarters. They were then reviewed at headquarters by staff in the enforcement office before referral to the designated Deputy Assistant Administrator for review and subsequent referral to Justice. It would not be unusual for the headquarters review to take several months. The package, often several hundred pages, would then be sent to Justice, and Justice could consider whether to file the case or reject it. Again, often months would go by without either filing or rejection.

Despite the number of hands and number of hours spent on the litigation package, EPA enforcement actions still were taken without a clear understanding of the resources the action would require, the position of the adverse party, and the goal of the action.

We now have instituted a procedure which will minimize double handling of cases and improve management. The region will now submit a two-page summary of the proposed litigation estimating the resources required to pursue the case, disclosing the date and outcome of the last negotiations with the adverse party, and addressing EPA's litigation goal. Only that summary will be reviewed here in Washington.

Stale cases, cases without a clear goal, and premature cases will be returned to the region. The remaining cases will go to a joint EPA-Justice Department review before formal referral. When a case does go to Justice, it will be with real expectation for immediate filing. Justice has agreed that cases not filed within 90 days will be reviewed again with EPA before filing to insure that the basis of the action has not changed. These reforms, which eliminate the practice of headquarters redoing work done in the region and which eliminates trivial, stale, and weak cases, will sharply reduce the number of lawyers necessary to carry out enforcement programs, and I believe enhance the environmental results which we can all expect.

Reports from the General Accounting Office, from the EPA Inspector General, and from the press have dwelt on the high cost and questionable quality of construction grant projects recommended and awarded by the regional administrators. There have also been problems with segmented projects, with one portion being funded in 1 year, and another in a later fiscal year. Often the unfunded segment could never be built if additional Federal funding failed to materialize.

In addition, the original regulations for construction grants were complex, confusing, and excessively long and detailed.

To deal with the problem of inappropriate construction grants, in May 1981, I required that any regional grant must also be approved by the Administrator. This was a stopgap measure while more long-term guidelines were being formulated. In June, after issuing criteria under which regionally awarded projects could qualify, a partial grant authority has been returned to regional administrators, except for design projects of greater than \$500,000 or construction projects of more than \$5 million.

Before a final decision is made on returning all the granting authority to the regions, the current management program will be

fully reviewed to insure that the mistakes of the past are, we hope, not repeated again.

In the area of regulatory reform of the grants regulations, a task force was formed to review and rewrite the construction grants regulations. This effort began in July, and the final draft of the revised regulations is currently under final internal Agency review. These draft regulations are one-third of the volume of the original regulations, and focus on reduced Federal involvement, fewer Federal requirements, and, as consistent with the earlier intent of Congress, increased delegation to the States.

Although \$30 billion worth of construction grants projects has been awarded since the enactment of the Federal Water Pollution Control Amendments in 1972, a substantial backlog has been reported in completing the projects, auditing them, and closing out the grants. Available data indicated that of the approximately 7,500 step 3 and 4 construction projects, only 2,500 had actually been completed and only 300, or 4 percent, had been audited. The audits which had been completed took longer than the required 6-month limit.

First, under the direction of Dr. John Horton, Assistant Administrator for Administration, most of all audit problems raised prior to March of this year have been resolved. Second, because we discovered that differing definitions for "completion" had been used in the past, and that the accuracy of a great deal of the data was questionable, we have made a major effort to insure that accuracy. The updated and corrected data should be available by mid or late November, and I will look forward to sharing it with this committee. Finally, we have set up criteria to insure that backlog projects will be followed more closely, and audited within the 6-month requirement.

The new administration also inherited a large backlog of expired water pollution discharge permits which need to be renewed. Approximately 30,000, or almost half of the EPA and State NPDES permits, had either expired or not been reissued. Of the 30,000, EPA is responsible for reissuing roughly 12,000.

Although we have succeeded in reissuing the majority of the major municipal permits, with the remainder likely to be completed in the near future, about 80 percent of the expired permits are industrial facility permits.

We have begun a major reform of the consolidated permit regulations and are now concentrating on the water discharge permit provisions. By simplifying the procedures, we intend to make the permitting program both more cost-effective and responsive, in addition to improving the ability of the States to take over operation of the NPDES program, again, as consistent with the original intent of this Congress.

The Environmental Protection Agency is currently establishing a process for the analysis of both the Clean Water Act and the Safe Drinking Water Act in preparation for their comprehensive reauthorization next year.

A major part of this process will be the active involvement of State and local governments, as well as a variety of other interests, to assure that the Agency receives a balanced perspective on the

current implementation of both acts and on suggested improvements and changes.

In terms of research and development, improvement of our scientific and technical knowledge about environmental concerns is vital. Unfortunately, as you know, the research and development program of the Agency has faced a number of criticisms in the past.

Although EPA has considerable scientific and technical talent and many excellent research facilities and equipment, these strong points are outweighed by a number of very real problems, including an ORD headquarters staff in which 31 percent are high level managers, a research program that has not always been responsive to the Agency's real needs, and the lack of consistent scientific quality.

Although some of these problems date back to the early seventies, the attempts of earlier administrations to solve them have not been successful, and we have embarked on a program to deal with all aspects of the problem.

First, a special advisory group, a mix of senior scientists and career managers, is undertaking a study to design measures for improving both the structure and the research process within EPA. Second, under the leadership of Dr. John Hernandez, the Deputy Administrator, EPA is implementing a thorough peer review process for scientific work in order to improve the consistency of our science. Third, in our efforts to improve both the research structure and the management systems of the Agency, we will be devoting special attention to assuring that a greater percentage of research funds go into research.

While I am still awaiting a number of specific recommendations from the special advisory group, once I have received them, we will begin moving toward further improvements in our research program.

In the office of air, noise, and radiation, management improvements have also been required. For example, last spring we had an intolerable backlog of State implementation plan actions submitted by the States on which EPA had not completed action. Annually, EPA handles more than a thousand State actions. As of the first of August, there were more than 1,000 actions which had been in the system for more than 1 year.

While the President has called for legislative changes which would reduce duplicative Federal rulemaking, pending enactment of these changes, I have instituted several procedural reforms to address the problem. These reforms will reduce the process for many State implementation plans at the Federal level from nearly 1 year to something less than 6 months.

As a result of giving increased priority to the SIP process and instituting these reforms, we estimate that we will be able to take action on more than 90 percent of the more than 1,700 SIP actions which were in the EPA system in July by the end of January. It will be progress I will be proud and happy to report in further detail. In addition to reducing problems with the States which arise because of the delays in EPA's handling of SIP submittals, simplifying the SIP review will permit significant savings in EPA resources. I estimate that in the future we will require less than one-

half of the total work years currently devoted to SIP review and approval processes.

In issuing permits for new source construction under the prevention of significant deterioration program, we are emphasizing State assumption of responsibility. I anticipate delegation of PSD permitting responsibilities to the States over the next year with the EPA role changing from one of permit issuance to one of providing technical support to the States. Savings in Federal resources will result from this delegation. Full assumption of this program by the States will depend in large part on Congress willingness to simplify the current statutory requirements and eliminate those which contribute to unnecessary delay and inconsistency.

We have moved forward in the area of regulatory reform. On April 6, the Agency committed itself to several specific actions to provide relief to the automotive industry from unnecessarily burdensome and complex regulations. Included therein was a commitment to simplify greatly our mobile source certification and compliance programs. In addition to providing major savings in both time and money to the motor vehicle industry, these changes reduce the amount of Federal manpower required to review and process industry applications.

We believe that these actions will accelerate achievement of our air quality objectives across the board, as attention is focused on results rather than procedures.

An area of particular promise for increased accomplishment is in our office of radiation programs. During the past several years, the radiation program has embraced a broad number of projects, bringing few of them to completion. This has caused substantial problems for other Government agencies, such as DOE and NRC, who have been forced to proceed without clear direction from EPA. The new direction for the office is to concentrate its activities on congressionally mandated objectives and projects and bring them to completion in the near term.

To carry out these priorities, we have made substantial changes in the management of the radiation office. We are now emphasizing program planning and accountability. People are being assigned to specific projects, rather than general functions. Activities have been focused on the job at hand, rather than on enlarged and rather ill-defined roles.

We are also trying to keep from "reinventing the wheel." We are more closely examining existing precedents for standard setting where possible. A good example of this approach is in the area of low-level waste where we are currently looking at NRC's licensing requirements for land disposal of radioactive waste and the International Atomic Energy Agency criteria for ocean disposal as possible building blocks in development of our regulations.

Followup by policy level personnel is more frequent and persistent than in the past. In addition, results are receiving a high level of attention. Dr. Hernandez is actively following development of two of the standards and has testified before Congress on the subject several times.

Finally, we are placing increased emphasis on coordinating our efforts with DOE and NRC at both policy and staff levels as key standards are being developed.

These combined efforts should enable us to produce standards in the radiation area much earlier than originally estimated. In testimony in June, Dr. Hernandez stated that the inactive uranium mill tailing standards would not be promulgated until January 1983. Since then the new management approach has been implemented and we now project that the inactive standards will be promulgated by March 1982. We anticipate that this is only one of several radiation standards that will be accelerated because of our increased emphasis on priorities, as established by Congress.

Obviously, I have not touched on all the concerns or on all the problems which may affect every member of the committee, but I do want to assure you that EPA remains fully committed to fulfilling our congressionally mandated responsibilities.

Because EPA is a part of the Federal Government, we too will share the spending and personnel reductions which the President has proposed and which Congress must consider.

In addition, I want to assure you that we will be more than happy to work with this committee, the Appropriations Committees, and the Congress in general, in exploring responsible avenues for continuing to refocus the Agency's activities on management for environmental results and the wise allocation of the people and money, which Congress appropriates for these purposes.

In conclusion, Mr. Chairman and members of the committee, I would like to reemphasize not only our sincere desire to work with the committee and our continuing efforts to carry out our missions, but our desire to do both in the most efficient and responsible manner possible.

I again would like to thank you and would be happy to respond to specific questions from committee members.

Senator STAFFORD. Thank you very much, Mrs. Gorsuch, for your statement.

I would recommend to my colleagues that we use the 10-minute rule as nearly as we can for questions, and have a second round of questions if that seems to be necessary until everybody has asked those which they consider pertinent. And my colleagues are aware that we have had a custom in this committee of recognizing members for questions in the order in which they appear in the committee hearings. So having got here first myself, let me ask the opening question.

Mrs. Gorsuch, you stated publicly since you took office as Administrator you have spent a very substantial amount of time on budget issues. Now I am not going to ask you to comment on numbers for the fiscal year 1983 budget, but I would like to understand, and I think the committee would, a little more about the budget process and your role in arriving at a budget for the Environmental Protection Agency. So my first question is, understand without regard to the numbers, have you submitted a proposed budget for fiscal year 1983 to the Office of Management and Budget?

Mrs. GORSUCH. Yes, Senator, as with every other agency and department, there is generally a deadline set for submission of a proposed budget, and we indeed have met that deadline.

Senator STAFFORD. Did you, personally, participate in developing this budget submission, and does it therefore reflect your personal

views of proper levels and allocation of funds in the Environmental Protection Agency?

Mrs. GORSUCH. That is a two-part question. Yes, indeed, I did personally participate in the development of the Agency budget. I think it is a very critical part of any administrator's duties to understand, with as great a degree of specificity as possible, where the dollars and the people provided by this Congress and this Nation, are allocated. I spent, I believe, 5 or 6 days with the program managers of each of the departments, going over their particular areas of concern. That was done in late August.

In terms of whether any figures reflect my personal recommendations, this is an ongoing period of consideration, time where views are exchanged and evaluation made of various programs, both by the President's budget office, our budget people and certainly our program administrators and directors. So I don't mean to mislead. But in terms of any final reflection of my budget, that will be available with those of all other agencies and departments in January 1983.

Senator STAFFORD. Let me ask you this, were you provided any guidance by OMB as to acceptable levels for your 1983 budget?

Mrs. GORSUCH. Yes, Senator. It is my understanding again that everyone throughout the Federal Government does receive target levels from OMB.

Senator STAFFORD. If so, may I ask you this. How did your submission, that is the maximum amount your request would entail, compare with OMB's guidance? That is, was your request greater, less than, or about the same as OMB's target?

Mrs. GORSUCH. Certainly I hope to be as forthcoming as I can in these hearings, but I do have a duty as Administrator to be protective of the internal decisionmaking process of the President, and I think it would be unwise for the entire process in terms of its integrity to go into the specifics at this time.

Senator STAFFORD. In general, could you tell us, although this may be a little bit repetitive, what are the steps that ultimately will produce the Agency's budget, and what role will you play beyond what you have described?

Mrs. GORSUCH. Beyond what we have described, there has been a presentation to the Office of Management and Budget. I think we can count on a very close scrutiny by the President's budget people who are charged with that responsibility, and they understand where we have plans to allocate resources, both in terms of people and money, and an ongoing period of discussion between now and January.

Senator STAFFORD. The chair has to say, knowing Dave Stockman, I would be surprised if your budget request wasn't higher than he might eventually want you to have. That is just an aside from the chairman.

Do you participate in the final budget total in the sense that could it be higher than, or do you anticipate rather that the final budget total could possibly be higher than the maximum amount requested in your submission?

Mrs. GORSUCH. Certainly, Senator, this is, as I indicated to you, a period for mutual discussion between the President's budget office and the Agency. As this committee well knows, there are several

areas which are very, very fluid. In terms of construction grants alone, you all have labored hard and long to provide the necessary reforms. It is still very much a subject of concern as to whether or not there will be funding for those programs in the future. So that is at least one very large variable in which budget figures, either proposed or actual, could be up or down between now and January.

Senator STAFFORD. As I indicated in my opening remarks, there have been a number of reports about the loss of key personnel at EPA, as well as allegations or extraordinarily low morale throughout the Agency. I know in your statement you alluded to the ongoing review to identify positions not critical to the Agency. I know that reorganizations and changes of administration inevitably unsettle people. But I would ask you now for your personal, candid appraisal of the relationship between career personnel and top level administrators at the Agency, and your comments on Agency morale.

Mrs. GORSUCH. Senator, I have been very pleased with both the caliber and dedication of the career employees at EPA, and I have had daily contact with many of them as issues arise for resolution. It is simply my style to have as many facts at my disposition as possible. So this contact has been frequent, notwithstanding the reports to the contrary.

I do believe we have a serious morale problem at the Agency. I think it is created in large part by the speculative type reports that have brought us here together. It is human nature indeed to be unsettled during times of change, and when the reported or rumored changes are of the nature that they have been in the past I think it is very detrimental to morale. Certainly that is a problem that I don't welcome. It is one that we will have to meet. I think that we will meet it in the best possible fashion by providing as much certainty to the work force at the earliest possible date. There may be, as I indicated, reductions in the working force consistent with the President's proposals in 1982. Those reductions, to the extent that they are merely speculative rather than being effected, I think, do cause real concern among the employees at the Agency.

Senator STAFFORD. To some degree you have anticipated my next question. Can you give us the facts about your plans for the reductions in the work force in 1982? For example, what do you anticipate the number of full-time employees will be on September 30, 1982, compared to the number as of the beginning of the fiscal year, October 1 of this year?

Mrs. GORSUCH. Well, Senator, as you know, the proposal for the 12-percent reduction has been made across the board. Congress has not yet acted on that. Our ceiling, I am just being told, is 10,387, and I would be happy to have Mr. Kinghorn, who is my primary budget officer, address that more directly. But our major reductions, although the administration proposal had been across the board, would not be. At least at this point we are not projecting to achieve them in any large degree through reductions in personnel.

Senator STAFFORD. Could I ask you this final question in this area. Would your reductions exceed the 12-percent reduction in the work force the President has suggested?

Mrs. GORSUCH. In 1982?

Senator STAFFORD. In 1982.

Mrs. GORSUCH. I have no present intention of exceeding that figure.

Senator STAFFORD. Might I ask you the same question about 1983?

Mrs. GORSUCH. Senator, I think it really would be misleading to this committee to project what is beyond what is known in the 1982 budget and where the reductions proposed by the President would be, because those numbers, as I indicated, are in a period of negotiation with OMB, could change dramatically up or down depending on several factors.

I am being reminded by staff—I think back to Senator Simpson's opening remarks to this committee he might some day die leaning on his staff—that the 12-percent proposal would not require any personnel cuts in order to effect the reductions that have been requested by the President's budget office.

Senator STAFFORD. You are talking about 1982 now?

Mrs. GORSUCH. 1982.

Senator STAFFORD. I see my 10 minutes have expired, so I will recognize Senator Randolph.

Senator RANDOLPH. Thank you very much, Mr. Chairman.

Mrs. GORSUCH, you stated that the final 1983 budget recommendation for EPA is not yet determined and will not be until, I understand, next January.

We recognize this process and do not expect you to predict the final decisions of the Office of Management and Budget. However, as the Administrator of EPA, you were required to submit budget proposals from your Agency to the OMB last month. Those have been made available to our committee; is that correct?

Senator STAFFORD. Yes.

Senator RANDOLPH. Now EPA must accept its fair share, in connection with budget reductions. Your proposals to OMB, however, suggest reductions beyond those sought by OMB. Please discuss with us your assessment of the EPA's needs as reflected in your recommendations to OMB.

Mrs. GORSUCH. Well, Senator, let me clarify a few things. In terms of the 1982 budget, that is where the President has proposed a 12-percent across-the-board cut, and, as I indicated, our agency along with all other departments and agencies in the Federal Government will be looked to for those reductions. We feel they can be effected without in any way impairing the Agency purpose or mission or objectives.

~~In~~ terms of 1983, those budget numbers are still very much in flux and in negotiation with the Office of Management and Budget. Neither the President's budget office nor our agency have arrived at any firm figures. Those will be developed in an ongoing process. To say that it is more or less than what has been requested by OMB—I couldn't do that without somehow violating the integrity of the decisionmaking process.

Throughout the budget hearings, I made it very, very clear to all of my program directors that what we must focus on are those areas where there have been congressionally mandated duties and obligations, and to focus also on approaching those mandates with environmental results as the goal. They were excellent hearings in

that each of the program managers with those directions provided real input for the allocation of resources both in terms of dollars and people. As you well know, it is certainly not a static agency. It is a dynamic one that has been growing over the past 10 years with additional responsibilities. We have certain programs that have reached a level of maturity consistent with congressional intent, where significant delegations have been made to the States. We have others newly founded, such as Superfund. With that diversity of responsibility and dynamism of obligation, there has to be a continued, ongoing scrutiny of how resources have been allocated and how they should be allocated in the future.

Senator RANDOLPH. Thank you very much. I want to say something that may not be necessary to repeat, but it is so often forgotten, Mr. Chairman. The laws governing the Agency which you head was developed within this committee.

Mrs. GORSUCH. I well recognize that.

Senator RANDOLPH. They are there because we were working, working, working, and we want to continue that at the present time. And I have said before, and I repeat, that you have within this committee, although its membership changes, those that are intensely interested in following through as we have in the past.

It is obvious that EPA, Mrs. Gorsuch, like all agencies will have fewer funds in the years immediately ahead. This will take place at a time when your Agency's responsibilities are increasing, especially in the control of toxic and hazardous materials. May I ask how you will organize your Agency and allocate these reduced resources to carry out what I believe are increased duties?

Mrs. GORSUCH. Senator, I think that is a very legitimate question, and I hope I have addressed it at least in part. There are significant management initiatives that have been undertaken and can be undertaken to see we undertake our increased responsibilities with a higher degree of efficiency, with focus on results rather than procedures. And, as I indicated in my earlier answer to you, indeed, we have new responsibilities, for instance, in Superfund, and those are ones I take very seriously and understand well the congressional intent and mandate.

There are other programs that have reached a certain level of maturity, such as air or water, where significant delegations, consistent with the intent of Congress, have been made to the states to carry out those programs. I think all of us sitting in this room understand that we can't achieve the important national environmental goals that we have set for ourselves unless that delegation is meaningful and does take place. In those areas where the programs have matured, the Federal role can and should change from one of being project specific to program overview. And it is this shifting of resources and allocations, along and consistent with the shifting of the responsibility the Congress has given to the Agency, plus the increased potential for real management of resources, that will enable us to do a job that you will be pleased with.

Senator RANDOLPH. Mrs. Gorsuch, you have said that you are, and I quote, "managing for environmental results." That has been your language. Let's talk about the hazardous waste area. I would not think that you would mean shutting down of the hazardous waste facilities in this country, but you would be very certain that

these adequate facilities were permitted and even new facilities that might be brought into being to handle what is a very real need in the country. If that is your goal, and that is my goal, the recent suggestion from top EPA staff that the financial responsibility requirements be withdrawn threatens that goal. The insurance of other evidence of financial responsibility for the operating and closure phases of hazardous waste facilities is clearly required by subtitle C of the Superfund law which you have mentioned. I think that most of the Members of Congress and even in the regulated community has always known that to be a fact. Now such assurance that public liability will be covered is a key to the acceptance of a facility by a community. They are nervous about having hazardous waste in their midsts. The financial responsibility requirement should not be dropped, especially when a strong market for such insurance is developing. How could you, Mrs. Gorsuch, give to us a suggestion or recommendation that is perhaps inconsistent with the needs of this program as put forward by EPA?

Mrs. GORSUCH. Senator, you are right. We have obviously a real responsibility in developing the regulations for issuing permits of hazardous waste disposal facilities, and those regulations are very complex and they must necessarily be in some respects as the area is complex technically and certainly legally. There has been no change suggested in the closure or post-closure of security provisions of those. We are indeed examining whether or not third-party operating liability should be retained as part of the permit requirements. In the process of reexamining that, should it be our conclusion it is not necessary, that would be proposed. We would receive comments on it, see whether or not our thinking is on track, and proceed as in any other rulemaking process.

Senator RANDOLPH. Well, I like the way you answered because I think you mean it.

I have several questions I shall submit in writing. And these are no less important than the ones I have been asking, and I hope that you will, Mrs. Gorsuch, give these your personal attention.

Mrs. GORSUCH. I certainly will, Senator.

Senator RANDOLPH. I would like that. If you could receive these and study them and have them back to us before the considerations start on the Clean Air Act, I think that would be helpful.

Mrs. GORSUCH. Certainly, Senator.

Senator RANDOLPH. Again, I thank you very much.

Mrs. GORSUCH. Thank you, sir.

Senator STAFFORD. Thank you very much, Senator Randolph.

The chair will reiterate that, according to customs in this committee, we recognize members on the basis of their appearance at committee hearings. And since Senator Baucus was the next member to appear, the chair recognizes Senator Baucus.

Senator BAUCUS. Thank you, Mr. Chairman.

Mrs. Gorsuch, one general question that concerns me is what would the effect of these budgets cuts be if, in fact, they work out to be as proposed. That is, it is reported that you sent over to OMB the general cut proposal of 20 percent, and that that would be in addition to the earlier 12 percent for 1982, plus another 12 percent as proposed by the President for 1982. The reports are that you then sent over to OMB a further 20-percent reduction for 1983.

And if you add in inflation later, say 10 percent, it comes out to a grand total net reduction of between 50 and 60 percent of EPA's operating budget. My question is if those cuts are enacted how would that affect staff? What would the reduction in staff be?

Mrs. GORSUCH. There just have been so many reports. When you ask what would be the effect of the report, it is hard to know whether that is Monday's, Tuesday's, Wednesday's report. The facts are, Senator, that EPA, as I indicated, will be seeking reduction across the board as the President has proposed of 12 percent in 1982.

Senator BAUCUS. That is in addition to the already enacted 12-percent cut?

Mrs. GORSUCH. In addition to the President's proposal in March. What we have to keep in mind is two things. The 12-percent reduction originally was from a base that really never existed. It was from the Carter proposal. The Carter budget was never in effect.

Senator BAUCUS. Nevertheless, the recent 12 percent is in addition to the 12 percent in March.

Mrs. GORSUCH. Yes, that is true. That is indeed factual. I think we can do our share in the Federal galaxy of agencies and departments consistent with meeting our obligations. Beyond that, I would just tell you all reports are just that, reports.

Senator BAUCUS. I understand. My question is assuming a 24-percent reduction, let's take that, then add an additional 20 percent which is reported to be your proposal for 1983.

Mrs. GORSUCH. Let me set the record straight. I have never proposed an additional reduction of that magnitude. That is where I think you have to caution yourself.

Senator BAUCUS. Maybe it would be helpful if you could set this straight. What is the 20 percent we hear about?

Mrs. GORSUCH. Senator, that is 1983 budget figures which are very much in negotiation with OMB. So I think any discussion of a percentage figure is really misleading at best. And I have made every attempt, and will continue, to be completely candid with this committee. If I were to discuss any percentage, we would be up here tomorrow talking about a different percentage. Notwithstanding that, the arithmetic that people have done on this is I think fascinating, because they assume a cumulation or arithmetic progression of percentage, which is simply bad arithmetic. When you are talking percentages from a base, they are not cumulative or additive.

Senator BAUCUS. I understand. We don't have a lot of time to get to the bottom of this. At least publicly on the record, we have a 24-percent cut for 1982 proposed, and in addition to that—

Mrs. GORSUCH. From a figure that never existed.

Senator BAUCUS. Well, from a figure at least somewhat related to the previous year's budget. But in addition to that, as the standard procedure, OMB has sent over a budget request for 1983, and that might have been an additional 20 percent, it may not have an additional 20 percent. Nevertheless, from all reports, and you are not yet denying it, an additional cut beyond the two 12-percents for 1982.

Mrs. GORSUCH. I have never made such report.

Senator BAUCUS. You did not send a request to OMB recommending a 20 percent cut?

Mrs. GORSUCH. I never made a report they were cumulative.

Senator BAUCUS. Did you send over a report recommending a 20-percent cut?

Mrs. GORSUCH. I sent my budget proposal to OMB, as has every other Federal agency and department, as of October. The figures are very much in sway and will be in the process of ongoing negotiation.

Senator BAUCUS. My next question is not to ask what you will do, my next question is what will the result be if in addition to the 12 plus 12, if in addition to that you sent over a request to cut in fiscal year 1983 by 20 percent. My question is if that is the case, not that it is, but if it is, what would the staff reduction be for 1983?

Mrs. GORSUCH. I have not spent any time evaluating that hypothesis.

Senator BAUCUS. You have not spent any time evaluating that. What would the reduction be in staff if we only have two 12 percent cuts in 1982?

Mrs. GORSUCH. As I indicated in my earlier answer to the chairman of the committee, we are looking, and we feel we can achieve the 12-percent reduction for 1982 without reduction in personnel.

Senator BAUCUS. So if an additional 12 percent is enacted, there will be no cut in personnel for 1982?

Mrs. GORSUCH. That is our current thinking. Now obviously that matter is before the Appropriations Committee at the present time, and whether or not they choose to do an across the board from each account will make a difference.

Senator BAUCUS. Let me ask another question. You say you haven't studied this. But again, if, not saying this is the case, if there were a further 20-percent cut in 1983, just using your best guess as Administrator of the Agency—you have your chief budget person, he can advise on it—using your best guess, what would the probable reduction in personnel be from 1982 to 1983?

Mrs. GORSUCH. Really, Senator, I do spend my time examining those things which have some relationship to reality. I have not spent my time analyzing what a cumulative percentage of an arithmetic progression of several reports might be if one took them seriously.

Senator BAUCUS. I understand that. What you are telling me is the reported 20-percent cut, whether or not it is cumulative, is no approximation to reality, it is an inaccurate report.

Mrs. GORSUCH. What I am telling you is I have not spent any time analyzing the cumulative 12, 12, 20 in terms of its effect on personnel levels at EPA, simply because it is an exercise that has no relationship to reality.

Senator STAFFORD. Would you indulge the Chair in one question at this particular point?

Senator BAUCUS. Certainly.

Senator STAFFORD. Because it seems to me, Mrs. Gorsuch, one of the major reasons we are here today, the major cause of the rumors is the so-called leaked budget submission for EPA for the 1983 fiscal year, and this might be a good chance for you, if you

wanted, to lay a lot of those rumors to rest by commenting on the authenticity of that particular document. If it is not authentic, now is the time to tell us so.

Mrs. GORSUCH. Senator, I honestly don't know. I think it was inside EPA that printed it. I don't know what your source is. My communications have been with the Office of Management and Budget. It is a decisionmaking process that they feel the integrity of it should be maintained. I concur. So, I can't tell you, Senator. I honestly don't know whether the document that was printed or is accessible to this committee has any relationship to the document submitted to OMB.

Senator STAFFORD. What you have testified to, Senator Baucus, would indicate that is not an authentic document, in my judgment. What we would like to know is whether or not you believe such a document exists, and have you seen it, and if you authorized it. If you haven't, this would be a good time to say so.

Mrs. GORSUCH. No, I indeed have submitted our budget request to OMB. It was done pursuant to the deadline for the development of the budget. It exists. I don't know what document this committee has in its possession, nor what its source is.

I don't want to mislead the Senator. I think there are, and I hope I have testified that way, several areas for increased management enhancements of the Agency where we can more effectively pursue our environmental objectives with reduced resources. What we were talking about is the cumulative effect that you were probing in terms of an arithmetic progression between percentages. That is just simply inaccurate, and I have not made any attempt to analyze what that inaccurate conclusion would do if it existed.

Senator BAUCUS. I understand. The major point of this hearing is to try to determine the facts. What is the proposed reduction in EPA, if that will help allay some of the morale problems that you say exist within the Agency. You talk about uncertainty within the Agency. We are having this hearing. This is the grand opportunity for you to make the record clear to create certainty, to tell this committee, to tell the EPA, to tell the country what, in fact, the intentions of the EPA administration are. But if we don't know as a certainty what the intentions are, then morale I think will fall even more. Industry won't know what the projection will be, the staff won't know, Congress won't know, at least not until next January. And certainly I think the administration and the Agency can perform a very sound, valid public service by, before January, telling the country, this committee, and the Congress what its probable intentions are for the future. Then you will be able to hire good people. I think any organization is really only as good as its people. It doesn't come from flow charts, boxes, and diagrams, it depends on people. You want to get the very best people, and to get the very best people you are going to have to have some certainty so they can meet their expectations, meet the job and provide a public service. That is one of the main ways to provide that certainty.

I am a little confused as to your testimony that EPA is overloaded, it is top heavy and wasteful. You mentioned EPA has a higher percentage of higher GS level than other agencies. My understanding is, though, that in many, many categories, let's take

the number of EPA personnel who work in construction grants, for example, EPA has fewer positions per \$1,000 of construction outlays than a lot of other agencies. EPA has, according to the information I have for fiscal 1981 anyway, EPA has 0.24 percent of its personnel who work in it per \$1,000 of construction outlays, Department of Transportation 0.53 percent, and HUD is 0.71 percent. There are other categories, number of EPA auditors per 1,000 grantees, that is 7.1, and a whole list of agencies, many 10 times higher than that. Number of EPA personnel as a percentage of operations staff, EPA operations, as a percentage of total work force, again 0.06 for EPA, and many others five, six, eight times higher.

Have you looked at other criteria in comparing EPA with other agencies other than the percentage of EPA personnel who are at higher GS levels?

Mrs. GORSUCH. Certainly, Senator.

Senator BAUCUS. What did those results show?

Mrs. GORSUCH. Let me comment on one of the figures you brought up because I think we can all play the numbers game and we can mislead ourselves.

Senator BAUCUS. That is true.

Mrs. GORSUCH. In terms of personnel per \$1,000 of construction dollars spent as compared with I think the Department of Transportation, or was it the Department of Energy?

Senator BAUCUS. Department of Transportation was one, HUD is another, Department of Interior is another.

Mrs. GORSUCH. They differ significantly from that of any other Federal agency in that Congress has wisely developed a program in which the responsibility for planning, design, and construction of the sewage construction grant is a largely delegated function so that the Federal work force is in an overview or supervisory point rather than in the actual hands-on buildings of the sewer plant. That is why those figures differ.

Senator BAUCUS. I see my time is up. There are other questions. Thank you.

Senator RANDOLPH. Thank you very much, Senator Baucus. We let the time run over a bit to take care of the time I used on you.

Next in order would be Senator Abdnor.

Senator ABDNOR. Thank you, Mr. Chairman.

Mrs. Gorsuch, I want to commend you on your statement here today. I only hope our news media will review your report and give it as much attention as they gave the unbiased figures which appeared in the newspapers. I think it is only fair that the goals you are working toward receive some attention because I suspect that there are a lot of people in this country who agree with you, particularly if you are successful in getting the job accomplished with less people.

The figures which appear in your testimony indicate that 6 percent of all EPA personnel are engaged in administrative duties. This figure has grown from 10,822 employees in September of 1977 to 12,346 in 1981. I believe that it is important to reiterate these figures.

While the average GS grade governmentwide is 8.25, up from 8.01 in 1976, the average Agency GS grade is 9.75, up from 9.39 in

1976. I think there is something there that we probably ought to take a good look at.

On a Government-wide basis, only 3.5 percent of all GS employees are grade 14 or above. But not so in EPA, 15 percent of EPA's employees are above that level.

Again, allow me to quote your figures, "As a more specific example, of the 230 headquarters personnel in the Office of Research and Development, more than 31 percent are at the GS-15 level or above." They are not scientists who do the work, but management people. That amazes me. It has been said that EPA employees have low morale. I can understand why. If I was one of those, I think I would go out and do something about it by trying to make someone look bad. Maybe we ought to take a look in our own offices. Do we give our employees the same kind of rating when they come up for salary increases, or do we think some are not as good as others?

I think Mrs. Gorsuch is trying to do something in management. If these figures are wrong, I hope we can bring that out. But if she is right, I think we ought to give her a big slap on the back for trying to do something here and helping us to get more for less money. That is what we are after.

I think the American people think we have too many people in Government.

I served as chairman for 12½ years on South Dakota's appropriations committee. There you see things from a smaller perspective. It is a smaller State. Believe me, there are a lot of agencies that can take a lot more cuts than an agency which is not properly managed.

You bet this committee indicates what we want accomplished. But the manner in which it gets accomplished is determined through management and the ability to get the most for your dollar. If we don't think you are getting enough, then it is our responsibility to do something about it. But I don't think we should condemn anyone who is trying to update the department and cut back on some of the personnel that is not needed. If Mrs. Gorsuch's figures are wrong, let's find out where they are wrong and make her give us an explanation. If they are right, I think she is doing a fine, fine job in this respect.

When I think that 3.5 percent of all GS employees are grade 14 or above, but 15 percent of EPA's employees are GS-14 and above, I have to wonder if that is necessary, maybe we have attacked too quickly. This often happens when we try to go back and correct everything after years and years of mistakes. We think we are going to whip it overnight and we get carried away and think that more dollars are the answer. I don't think so.

I, for one, want to commend Mrs. Gorsuch. It appears to me she is doing a pretty good job here unless we prove her wrong. Mrs. Gorsuch, I am impressed with your theme "management for environmental results." I agree, that problems are not always solved by throwing money at them. What is needed is careful, step-by-step management of programs.

I know that management reform often does not result in dramatic headlines. It is not a news-grabbing theme. But it is these careful management steps that are going to yield results. I hope we keep that in mind.

I was very impressed with pages 3 and 4 of your testimony, Mrs. Gorsuch. You are doing something. You are showing us what you are doing. I am shocked this hasn't been done before. We shouldn't simply adopt numbers and say, go out and do what you think is right. We should develop a responsible plan before spending billions of dollars.

Maybe construction grants needed a little reviewing. This committee went back and reviewed the construction grant program.

So I don't think we should panic when we read unfounded accounts of cuts that some allege will destroy EPA. Mrs. Gorsuch, I thank you for the job you are doing.

Mrs. GORSUCH. Thank you, Senator.

Senator STAFFORD. Thank you very much. Senator Abdnor. I don't think we have held hearings out of a sense of panic, nor out of a sense of condemning Mrs. Gorsuch. This, in the view of the chairman, was an opportunity for a frank discussion between Mrs. Gorsuch and the committee, an opportunity to lay some of these rumors to rest so none of us at the Agency or here on the Hill would bother with them any further.

Senator ABDNOR. Mr. Chairman, maybe I got a little carried away. Everyone seems to think that cutting dollars is necessarily destructive. You and I both know, from our experience in small State legislatures, there are differences in agencies and departments and some do require more careful study. EPA is a large agency, created in a few years' time, with many employees, and it could be an agency which has lacked some management, and I certainly want to commend our current Administrator for trying to improve its efficiency.

Mrs. GORSUCH. Thank you.

Senator STAFFORD. Thank you very much.

Next in order of appearance would be Senator Mitchell.

Senator MITCHELL. Thank you, Mr. Chairman.

I agree with Senator Abdnor that we ought to look at these figures carefully and attempt to analyze, and I would like to do just that, and particularly some figures Senator Abdnor cited in praising Mrs. Gorsuch.

Senator ABDNOR. These are not my figures.

Senator MITCHELL. I understand.

Mrs. Gorsuch, as I read it, your statement is a sweeping indictment of EPA as it was operated before your taking over and a catalog of changes you propose to make. The impression is one of an agency growing rapidly and out of control. And one of the figures cited here, which obviously impressed Senator Abdnor, is your statement in which the written text says, "The total number of EPA employees grew from 10,822 in September 1977 to 12,346 in September 1981." That, of course, is a substantial growth. I note, however, although it does not appear in the printed text, you added "to the authorized" higher figure in September 1981. So my question to you, is the figure 12,346 in September 1981, the higher figure to which Senator Abdnor referred, actual or authorized positions?

Mrs. GORSUCH. Those are actual positions.

Senator MITCHELL. Those are actual positions. So it is at the higher level, as you suggested, because there have been numerous

reports made which indicated that the actual level of employment is approximately that which existed in September of 1977, somewhere between 10,000 and 11,000.

Mrs. GORSUCH. No, I am just told by my comptroller, upon whom I rely, that the authorized ceiling for 1981 is 13,000. I gave you actual numbers.

Senator MITCHELL. So actually when you inserted the term "authorized" you were in error.

Mrs. GORSUCH. I was in error.

Senator MITCHELL. And authorized is 13,000 and actual is 12,000.

Mrs. GORSUCH. Yes.

Senator MITCHELL. It is good to get that clarified.

Mrs. GORSUCH. I would also like to clarify the characterization of my statement. It was not meant as an indictment of anything or anyone, but rather as an outline for some of the opportunities for more efficient management which indeed are inherent in the current structure which I felt you, with your membership here and your dedication between the environmental laws and goals we have set and you have established would share in seeing as real opportunities, as Senator Randolph does, a little bit Pollyannish, to the extent you find problems, you look at opportunities for enhanced efficiency.

Senator MITCHELL. Nobody disputes that. But I think it is impossible to read this statement and reach any conclusion other than that it is a sweeping indictment of the Agency as it operated before you took over. I am not suggesting that is your intention. I believe any objective analysis of this statement would reach that conclusion.

Now you talked about enforcement. That is an area where I have some experience. I was in the Department of Justice and I was a judge. I prosecuted cases. One way you can deal with enforcement is to bring fewer cases.

According to information available to me, in previous years, the EPA referred an average of about 200 cases a year to the Justice Department for civil action. In this year totally, only about 60 cases have been referred, and since you were confirmed only about 5 cases have been referred. I ask this question first. Are those figures correct, and if they are not would you please give me the correct figures?

Mrs. GORSUCH. Senator, I would be happy to answer at length, and perhaps it would be best to do it in writing because I am looking at numbers and I want to make sure they are correct. The cases referred to Justice since I was confirmed, which was May 20—we are now less than 5 months from that date—have been 33.

Senator MITCHELL. Thirty-three, all right. How many since January of this year?

Mrs. GORSUCH. Since January of 1981, there have been a total of 71.

Senator MITCHELL. Now that is at an annual rate of about a hundred, which is a reduction in half of the average of cases over the past several years.

Mrs. GORSUCH. I don't know that to be accurate. I would have to go back and look at prior years.

Senator MITCHELL. Would you do that?

Mrs. GORSUCH. I would be happy to.

Senator MITCHELL. And would you submit in writing a statement indicating the number of cases referred for prosecution in prior years, and if there has been in fact a significant reduction in the number of cases referred, would you provide us with an explanation for that in writing?

Mrs. GORSUCH. Certainly.

[The information requested follows:]

There have been 71 civil and 4 criminal cases referred to the Department of Justice through October 2 in 1981. Prior year civil and criminal cases were:

1977	182
1978	293
1979	205

The attention now being focused on numbers of new cases referred to Justice for possible future filing causes me some concern. There are a number of other, and in many cases more effective, ways for us to deal with compliance problems than new case filings. In fact, with some 1400 facilities Nationwide already covered by initiated enforcement action, there is a declining pool of serious violators against whom litigation would be the desirable course of action. Depending on the particular circumstances, modification to existing consent agreements, amendments to filed cases, or addition of further counts to cases already being developed may be the more appropriate steps to take.

Although civil litigation is the appropriate response to some violations, it is not the right remedy in every case. Congress has placed powerful administrative tools at our disposal which can frequently result in more rapid notification to the source of the problem and swifter adjudication of issues than is possible with crowded Federal Court dockets. Since the July 1 Agency reorganization, more than 50 penalty actions and/or compliance orders have been issued under these authorities and over 40 settlements of previously instituted administrative proceedings have been filed.

Mrs. GORSUCH. I would like to point out this number of cases referred is often a very shaky tool on which to rely, as our examination of the backlog has indicated. Indeed, there have been cases referred and cases sitting, and there have been good reasons for that in many instances. Either the evidence was too weak and shouldn't have been referred in the first place. Cases are often stale, some have been sitting since 1977. So while I think we have to rely on certain number of cases referred to Justice—and I will be happy to provide that information—I would caution you the mere referral of the case should not be certainly the measure of this administration's commitment to enforcement, nor a measure indeed of the past.

And along those lines, I would like to say there is a change in the emphasis in enforcement by this administration. I have said it often publicly, and I am proud of it, we will no longer be bean counting. We will be filing cases in an order or priority for environmental results. What will have the greatest impact in environmental cleanup will be the No. 1 priority for filing. The No. 2 priority will be repeat offenders. We will no longer be looking at performance standards and saying, how many cases have you filed this month, with no object of nor consideration for the environmental effects we are looking for.

Senator MITCHELL. That suggests previous administrations enforced cases without regard for the effects. In other words, all the positive aspects you associate with the present position carry a negative implication. I am aware the number of cases referred is not in and of itself a determining factor of effectiveness of enforcement. I am also aware it is a significant factor. Nobody in this country believe people stop violating the laws just because the number of cases goes down or reduces to nothing. We could simplify enforcement and not refer any cases. I think the number of cases referred is a significant factor, especially if there has been a pattern and an average number of cases over several years through several administrations. And if in fact there is suddenly a precipitous reduction in the number of cases referred, I think that is a significant fact. It is obviously not all inclusive and doesn't explain everything.

Mrs. GORSUCH. You and I will be looking at different milestones. I will be looking at the results of cases brought, how many are won, and what are the environmental results of winning them. I continue to have that focus on enforcement. I think it is what we are all about and what we are ultimately looking for.

Senator MITCHELL. I would like also to ask about your comments on the air program and the speed up of actions regarding State implementation plans. That is another area that concerns me deeply.

As you know, I talked to you personally. I questioned Ms. Bennett at length, she came here, regarding the problem of avoiding increasing emissions of sulfur dioxide from stationary sources, particularly in the Midwestern part of the country. I asked Ms. Bennett about the number of applications that have been filed with your agency and which have been approved relaxing standards and permitting increases in sulfur dioxide emissions. One way to get rid of the backlog is approve everything that comes along. I am not

suggesting that is what you are doing. Ms. Bennett told me you have approved a substantial number, I think it was 23 applications, authorizing increased emissions of sulfur dioxide in excess of 50,000 tons, and there were at that time another 11 applications pending which, if granted, would result in an additional 30,000 tons of sulfur dioxide being emitted. I would like to ask you to provide us with the figures, if you know them now, you may not know them offhand, if you would provide to us in writing the number of applications either pending as of January or filed since January for relaxation of standards which would, if granted, produce an increase in sulfur dioxide emissions; the number granted, the tonnage increase that will result, and the number pending, and the tonnage increase that will result if they are approved. I assume you don't have that.

Mrs. GORSUCH. No; Senator, I don't have those at my fingertips.

I would like to state for the record that we are emphasizing national air standards, not emission permits by specific locales. As you know the construct of the Clean Air Act requires us to set national ambient air quality standards which are protective of the health of the people of this country, and within that, beyond those standards, to ask the States to develop plans showing how they will meet those standards given reasonable goals and certain dates. Whether or not a specific plant increases its emissions, our focus can and must be, should be on the national ambient air quality standards. That is the measure that you have given us to control the health of the people of this country. So the question of whether or not a specific plant has an increased loading potential is really not the relevant issue that I would invite you to focus on.

Senator MITCHELL. I understand. But you are also aware of the consequences of that with respect to increased sulfur dioxide emissions.

I would just like to make one comment. As I said earlier, I think your statement is a sweeping indictment of EPA in previous years. That is, of course, a subjective judgment. You are in a unique position to comment on that. I would hope in fairness, Mr. Chairman, we would at some point provide those who may hold a contrary view to express their opinion.

I would like to make one further comment. Have you ever heard of a man called Donald Lambrow, author of the book "Fat City: How Washington Wastes Your Money."

Mrs. GORSUCH. Have I heard of a man named Donald Lambrow?

Senator MITCHELL. Yes.

Mrs. GORSUCH. No.

Senator MITCHELL. Have you heard of the book?

Mrs. GORSUCH. I have heard of the book.

Senator MITCHELL. According to Washingtonian magazine, this book so impressed President Reagan that he gave a copy to every member of his Cabinet. Did he give you one?

Mrs. GORSUCH. No, sir. I am not a member of the Cabinet.

Senator MITCHELL. Just as a matter of interest, Mr. Lambrow investigated—I don't know the man, so I have no grief for him—just to present a balanced view, his analysis concluded that three agencies of Government, in particular, have maintained scandal-free administrations and conducted them with a high degree of

efficiency, and he identified the EPA as one of the top three agencies of Government. There is at least some subjective opinion that is at least contrary to the opinion you have expressed. No doubt it can be improved, but there are some who do not share your opinion about the dismal performance of the EPA in the past.

Mrs. GORSUCH. Senator, I would like to emphasize your characterization of my statement as an indictment is your characterization, not mine.

Senator MITCHELL. I understand. And I would leave it to anyone to read this statement to reach any other conclusion.

Thank you, Mr. Chairman.

Senator STAFFORD. Thank you, Senator Mitchell.

So members present will know the batting order, Senator Chafee is next, Senator Burdick would be next if here, followed by Senators Hart, Bentsen, Simpson and Moynihan, in the custom of this system of going in order of appearance at this hearing.

Senator Chafee, the floor is yours.

Senator CHAFEE. Thank you very much, Mr. Chairman.

Mrs. Gorsuch, I really don't care whether you double your budget request or cut it in half, it seems to me the importance is in the ability of the Agency to do its job. I must say as I listened to your statement I was uneasy. It seemed to me a concentration on form rather than substance. How many computer operators, how much APD equipment, how many GS-14's, rather than how are we doing the job there. I would like to ask some questions along that line.

In connection with the Clean Water Act, for example, what is the status now of the development of the control of toxic pollutants? How many industries have you developed guidelines for so far?

Mrs. GORSUCH. Senator, let me tell you I share your focus. It shouldn't be on numbers, it should be on results, how well we are doing our job. I regret any level of detail the statement provided not being relevant.

But the BAT guidelines—

Senator CHAFEE. Control of toxic pollutants, how many industries have you developed the guidelines for so far?

Mrs. GORSUCH. Congress mandated that activity in 1976, and to date there has been exactly one, as I understand it, that has been promulgated. This is notwithstanding the expenditure of lots of time and lots of money. It is certainly an area that is an enormous challenge to this administration to try and develop those guidelines which Congress mandated and which simply haven't been forthcoming.

Senator CHAFEE. In all, as I recall it, there are 51 industries affected, if I am not mistaken, something in that neighborhood, and which I think you say you have developed guidelines for 1 or 2. I think it is two so far, some others are coming along. It seems to me that is a record that is not very enjoyable.

Mrs. GORSUCH. I totally agree, Senator.

Senator CHAFEE. I am not putting the blame on you, I am just saying there is a goal that we set for it some time ago that is not being achieved. It seems to me the important point is not how

many GS-14's you have got or how many computers but are we keeping these goals, and when are we going to reach them?

Mrs. GORSUCH. I totally agree. Notwithstanding the fact some characterize the Agency's performance in some areas as good, it is hard for me to believe since 1976, and I do look at numbers, 882,000 consultant man-hours have been spent and \$123.5 million and we have one final guideline. Twelve others are proposed.

Senator CHAFEE. Are you still operating under a consent decree?

Mrs. GORSUCH. That consent decree is in the process of—well, it was arrived at between the Agency and the adverse party. It was appealed and it was remanded to the district court for reconsideration, and it is at the process of remand at the present time.

Senator CHAFEE. Are you in compliance with the decree, EPA?

Mrs. GORSUCH. With the terms of the original in terms of the deadlines it set out, the one that was appealed and remanded?

Senator CHAFEE. That is right.

Mrs. GORSUCH. I would have to check. It would be my unconsidered opinion that we are not, but I will verify that.

Senator CHAFEE. Now sticking in the Clean Water Act, let's talk a little bit about the water quality standards. What is the status now of your efforts to set the standards for 65 pollutants?

Mrs. GORSUCH. I am sorry, Senator, I was distracted.

Senator CHAFEE. I am talking now standards, the water quality standards, which you are required to set the standards for 65 toxic pollutants. How are you doing?

Mrs. GORSUCH. That was the area in which I was talking.

Senator CHAFEE. Before we were on the industry guidelines. Now we are talking about the toxic pollutants themselves as far as the water quality standards go.

Mrs. GORSUCH. I am informed, and I will be happy to verify this for you, that 64 are out and that there is 1 that is under review currently. So we have a little bit better track record there.

Senator CHAFEE. Well, your track record is better than my record shows it to be, and if you have got 64 that is fine. You mean you have developed the criteria for 64?

Mrs. GORSUCH. May I ask for a moment to consult with my chief staff.

Senator CHAFEE. Yes, go ahead.

Mrs. GORSUCH. Senator, I am informed, and as I say I will be happy to follow through with verification, that 64 were proposed last December. One is still under review. What has not been done is the development of guidelines for adaptation by the States in their programs.

Senator CHAFEE. It seems to me this is the thrust of what the Agency is all about.

Mrs. GORSUCH. I agree.

Senator CHAFEE. Again, not how many GS-14's, but this type of effort which Congress has mandated. And I would like to echo a point made here before, and that is despite the suggestion around the country that environmental laws are under assault, that no longer are they popular, you and I have discussed this, that the concern for the environment is just as high now in the United States among its citizens as it has ever been. I wouldn't want

anybody to interpret that last election as a rejection of the environment.

Mrs. GORSUCH. Absolutely. Last night I was on the McNeil/Lehrer show, and they cited a figure of 67 percent, it is the lowest I have ever seen, strongly behind strong environmental legislation and its implementation. And I was asked to comment on it and I missed the opportunity. I wish I had said that you can count on me as one of the 67 percent. We are here because we have a commitment to the environmental preservation, and one this administration feels strongly about.

Senator CHAFEE. Now I would like to turn to another matter, and that is the 404 and preservation of wetlands. I am worried about that because of the so-called Task Force for Regulatory Review under the Vice President. Is there a review of the 404 regulations going on now, and if so are you on that task force, and if not why not?

Mrs. GORSUCH. There is a task force which has just recently been formulated for the purpose of reviewing the 404 program. EPA does have membership on the task force. I, personally, have not been attending those meetings. They have just really begun.

Senator CHAFEE. It seems to me you ought to be chairman of any such task force, because no one is closer to this than EPA. EPA is the moving force in the 404 regulations.

Mrs. GORSUCH. My chief of staff reminds me that the first meeting was yesterday. I did not attend. I did send a very competent delegation. And I will carry your message to the task force to see if they agree.

Senator CHAFEE. Well, if that will give you some help you are free to use it.

Do you have any amendments under way in 404 yourself?

Mrs. GORSUCH. No, sir. I know of your interest in that area, and we will make every effort to keep you and your staff informed of developments.

Senator CHAFEE. One final question. As you know, first of all, as we have discussed before, this committee is here to help you. We have got a common cause to make, and we want to work in teamwork with you to achieve our goals. In addition to administering these programs under EPA, we also look to you as a rigorous spokesperson for the environment. And I get disturbed that there is such deference to OMB. OMB isn't omniscient. OMB doesn't know everything that takes place that is in your responsibility. And I am concerned that I received a letter from the Governor of the State of Utah on which he is meeting with the head of OMB, Mr. Stockman, on the wastewater treatment construction grants program. It is beyond me why he should be meeting with Mr. Stockman on that. And the Governor states that "The principles of new federalism, transition and flexibility should be incorporated in the construction grants program." Now why is Mr. Stockman saying that?

Mrs. GORSUCH. Well, without being flip, I think it would be safer to ask Mr. Stockman that.

Senator CHAFEE. But you are the spokesperson for the environmental program.

Mrs. GORSUCH. I very much appreciate the cooperation of this committee with our Agency in addressing that very thorny matter of construction grants. Your deliberations were very, very useful, and I understand you are working with us.

Senator CHAFEE. Well, we appreciate the help Mr. Hernandez gave us.

Mrs. GORSUCH. Your time and effort was certainly appreciated, Senator.

Senator CHAFEE. But the point I wish to leave with you is that OMB is a very powerful organization throughout the Government, and as well it might be. It equates to the department of administration I guess in any State. But it does seem to me it is incumbent upon you, and I want to reinforce, undoubtedly you have done this, I want to reinforce you must strongly speak up on behalf of your Agency and work yourself into the position to the greatest extent such that questions in the construction grants program are in your sphere.

Mrs. GORSUCH. Well, I understand that, Senator. I would say I guess it is primarily because it is a budget item the Senators find their way to the keepers of that purse.

Senator CHAFEE. The Governor in this case did.

Thank you, Mr. Chairman.

Senator STAFFORD. Thank you, Senator Chafee.

Senator Burdick is not present. Senator Hart.

Senator BAUCUS. Mr. Chairman, I wonder if I could interject. I have to leave, but Senator Gorton very much would have liked to have been here. He has some questions. The reason he is absent is there has been a death in the family and he is in the State of Washington.

Senator STAFFORD. If there is no objection, the chair would reserve to members the right to submit questions in writing, and we would ask you to answer as expeditiously as possible.

Senator Hart.

Senator HART. Thank you, Mr. Chairman.

Mrs. Gorsuch, what obviously is concerning members of the committee is what is being said. It is less to do with how many GS-14's there are, but rather the Agency's capability. Whatever the funding level available to do the job, the American people have indicated they wanted thorough legislation passed by Congress and informed by the executive branch. I think that is what we are trying to get a handle on, whether, in your judgment, given pressures on you to reduce the size of your budget and your staff, whether those things can be done.

If one approaches the environmental problem in this country as a static one, that is to say, it doesn't change but is the same all the time, and your approach to this is all we have to do is make management more efficient and we can attack that static problem better, that is all right. But I think the problem here is environmental problems are cumulative and they tend to mount and grow if they haven't been solved. And some of them haven't been solved. Although, we have made progress on clean water and air. Now toxic substances tend to grow because we haven't solved that problem. And if you have a growing problem or a problem that refuses

to diminish at least, can one solve that problem with fewer people and less money?

We hope your management efficiency approach to that is a sound one. But what I think concerns many on both sides of the aisle is there are many who want to use budget cuts to break the back of the Federal Government to solve those problems. That is really at the heart of the questioning about percentages. I think those of us on both sides of the aisle want to find out whether pressures on you or the Agency so diminish EPA's ability to solve the problems that we will go back to where we were in the sixties, fifties and forties, when we let the environmental considerations go unanswered.

You inherited a lot of problems EPA hasn't solved, and you suggested the Agency was pretty badly managed before you came along. I may add some evidence to that in a statement I would like consent to include in the record. It includes about 12 major requests from Congress for EPA to take action or make reports. We still haven't gotten those reports. We are going to continue to task you with problems to solve. We also want to know when the backlog is going to be cleared away and whether it can be.

What I would like you to do is take a look at 12 of those items, including an item that EPA decide by August 1978 whether to establish a new short-term air quality standard for nitrogen dioxide, a request not met at this time, and respond in writing to the committee as to when EPA will get that done, particularly under reduced management levels.

[The information requested appears at p. 43.]

Mrs. GORSUCH. I would like to point out, Senator Hart, you are quite right. There is a considerable backlog with allocation of resources through the period of time. As I stated in responding to Senator Chafee, since 1976 we have made an incredible expenditure of money with one standard. That is a challenge I take very seriously to meet the congressionally mandated objectives of the laws we have enacted for ourselves. I feel very strongly about it. Throughout all of our budget hearings, that directive was given to all of the program managers. Wherever there is a backlog in terms of regulatory development, in terms of State implementation or approval, whether approval or disapproval, people need answers.

Senator HART. Well, could you give us some answers as to when those reports will be available?

Mrs. GORSUCH. The ones requested in 1976, 1977? I will be happy to address it.

Senator HART. You said earlier there is a serious morale problem at EPA caused by press accounts of proposed changes in EPA. Are you suggesting to us the press is responsible for creating the reports which often cite Agency officials themselves as saying there are serious morale problems? Where does the cycle begin?

Mrs. GORSUCH. No, Senator; I am saying the States of flux people are in, and we can't reach a degree of certainty until we know what the 1983 budget figures are going to be for 1983, does indeed cause morale problems. Speculations, like rumors, are always easier to create than facts. The facts will be known in January. The uncertainty between now and January is detrimental for people.

Senator HART. Is it really your own Agency officials that are worried about what OMB is going to do or are they worried about what you are set on?

Mrs. GORSUCH. Senator, I don't think the lines break down there at all. I think they do break in not having an element of certainty. That is why I do appreciate this opportunity. The things we know that are there, EPA will be seeking, as every other agency in the Federal Government, to comply with the President's request for a 12-percent reduction. That is known. That is certain. That I am happy to share with you.

Senator HART. Twelve percent in 1982?

Mrs. GORSUCH. In 1982.

Senator HART. But isn't what is happening here and what has produced all these press reports is people in your agency have seen your budget request to OMB for 1983 and are rebelling by giving reports to reporters, who are printing them?

Mrs. GORSUCH. I can speculate and agree with your speculation, but it would be speculation.

Senator HART. So you are saying that the press reports—

Mrs. GORSUCH. No, I am saying only how it could happen. I can only conjecture, like you.

Senator HART. What do you think of my conjecture?

Mrs. GORSUCH. I think it is as good as any other.

Senator HART. The fact of the matter is we didn't get very far with the chairman or Senator Baucus, but there are all kinds of copies of this document which is your 1983 request which are all over this committee table here. I don't think they came from the tooth fairy. Somebody at EPA is very unhappy. You are suggesting they are unhappy because of press reports. They are unhappy about this document. I think they are unhappy, if I understand the unhappiness, about the agency's ability to do its job, not whether there may be some of them losing their job. That may be. But I think there are a few motivated people there who are worried about EPA's ability to do what Congress and the American people have told EPA to do. I think that ought to be taken seriously. I take it seriously.

Mrs. GORSUCH. Certainly I take it seriously, Senator. I have said repeatedly, indeed, I think we will have adequate resources to do the job you have given to us, and with good management to do it more efficiently, which is what we all should be focusing on what the results are rather than what the speculation is.

Senator HART. I would love to pursue this, but let me ask one more specific question.

As you know, there has been all sorts of confusion with the clean air laws and the administration's position, and again there have been leaked documents. I am confused as to what the administration intends to do about revisions of the clean air law. I know the President and you have issued 11 guidelines. The issue is has the administration prepared a draft revised clean air bill, and if it has is it going to submit it to this committee?

Mrs. GORSUCH. Senator, EPA has drafted several revisions of each particular section brought to its attention as perhaps needing to be readdressed by Congress. There have been several iterations on each section. The administration has not submitted a bill. It will

be continuing to work with the chairman of this committee and other members on the comprehensive reauthorization bill of the Clean Air Act this year.

Senator HART. I didn't get an answer. Will the administration submit a bill?

Mrs. GORSUCH. We have no intention of doing so at this present time, Senator.

Senator HART. Is it possible that you will submit a bill?

Mrs. GORSUCH. Anything is possible, Senator.

Senator HART. That is hardly helpful.

Mrs. GORSUCH. We have no present intention of submitting a bill at the present time. We do intend to work with the members of this committee, the chairman, work with him based on the 11 principles we have iterated.

Senator HART. In other words, instead of a bill, could we see hundreds of amendments drafted by EPA to amend the law or dozens of them? I don't know what working with the chairman means.

Mrs. GORSUCH. And the other members of this committee. As I understand it, there might be some attempt to have a markup on an issues basis somewhere in the near future. We certainly hope to have an input there through the chairman and other interested members of the committee in articulating the administration's position on those issues.

Senator HART. How many issues could we expect administration positions on?

Mrs. GORSUCH. Senator, I don't think I could give that a candid, reasonable response. We have enunciated 11 general principles. Depending on how you break out issues, perhaps you would have 11 different issues we feel are of prime importance in congressional reauthorization of the Clean Air Act.

Senator HART. Mr. Chairman, on that issue I don't know a whole lot more than I did before. It is one thing for the administration not to present a bill. It is another thing for the administration to present dozens and dozens of amendments which if you took the Scotch tape could create a bill out of them. That is what I mean. I know there are 11 principles. I guess we are not going to get it all at once. I would like to know how many pieces we are going to get, and I can't seem to find that out.

[The information previously requested by Senator Hart follows:]

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- A requirement that EPA decide by August 1978 whether to establish a new short-term air quality standard for nitrogen dioxide -- but the Agency has not determined whether or not to set the standard;

Status

A continuous program has been underway to review the need for new or revised NO₂ standards since September of 1977; the first phase of this program took place through the summer of 1978. During this period, EPA was involved in an accelerated review of the health problem related to short-term NO₂ concentrations. A draft criteria document was prepared, reviewed by EPA's Science Advisory Board, and revised. Public hearings were held on the possible development of a short-term NAAQS for NO₂.

In the summer of 1978, the Agency decided to consolidate review of both short- and long-term concentrations. We believe this was a prudent choice in view of the difficulties encountered in 1977-78 when trying to segregate the effects caused by long- and short-term concentrations. In a number of critical studies it has been difficult to attribute effects to any single exposure pattern. While it is generally agreed that NO₂ adversely affects human health, there is considerable uncertainty as to whether the insult is related to single peaks, repeated peaks, sustained exposure to relatively stable concentrations, or some combination thereof.

Subsequently there have been two drafts of a comprehensive criteria document which were reviewed by the Clean Air Scientific Advisory Committee (CASAC) in January 1979 and November 1980. There have also been two CASAC meetings to review drafts of a NO₂ "staff paper" that describes how the scientific data in the criteria document will be used in developing recommended standard revisions. A CASAC meeting is scheduled for mid-November to seek closure on the NO₂ staff paper.

During this entire process we have also been working on the Regulation Impact Analysis (RIA), which analyzes the cost, economic, energy, and environmental impacts of alternative levels and forms of the NO₂ NAAQS. As a result of Executive Order 12291 issued earlier this year, the RIA will need to be augmented to include a benefit/cost analysis. When we have received concurrence by CASAC on the staff paper and completed the RIA, a Federal Register Notice will be published proposing action on short- and long-term NO₂ standards.

A requirement that EPA review four substances (radioactive pollutants, cadmium, arsenic, and polycyclic organic matter) to determine whether they should be subject to either air quality standards or hazardous emission standards -- but the Agency has only completed two of these four reviews;

Status

Radionuclides were listed under Section 112 on December 27, 1979, and emission regulations are presently under consideration.

An assessment of the health effects of cadmium has been completed and approved by the Science Advisory Board. It concludes that excessive exposure to cadmium can cause irreversible kidney damage and there is some, but not yet conclusive, evidence of carcinogenicity. An assessment of public exposure has also been completed. Although there is a potential for significant exposure if source categories are uncontrolled, most major sources (non-ferrous smelters, municipal incinerators, power plants) are already subject to requirements of State Implementation Plans and New Source Performance Standards for particulate matter or lead emissions.

The staff has tentatively concluded that current cadmium air pollution does not constitute a non-carcinogenic health hazard by itself nor when added to cadmium exposure from food and drinking water. EPA will announce soon in the Federal Register its conclusion on whether there is a need to institute a Federal regulatory program directed specifically to cadmium.

Inorganic arsenic was listed as a hazardous air pollutant under Section 112 on June 5, 1980. Regulations are under development, focusing on high arsenic feed copper smelters.

With respect to polycyclic organic matter (POM), EPA is presently focusing much of its attention on coke ovens, a major contributor to POM emissions. Documents on the health effects, public exposure, and cancer risks were prepared and reviewed by EPA's Science Advisory Board (SAB) in 1978. At the same time we have been developing hazardous pollutant emission standards for topside, charging, and door leaks at wet coal charged coke batteries, and these have been reviewed by industry and the appropriate EPA advisory committee. A revised carcinogen assessment document is scheduled for SAB review early next year. We are aiming at announcing our decision whether to list coke oven emissions under Section 112 by Spring 1982. If we decide to list, we will be able to propose emission regulations at the same time.

A requirement that EPA review by December 1980, all existing air quality standards -- but the Agency has still only revised one standard;

Status

In general, the review and revision of the NAAQS is a difficult and time-consuming process. For example, the preparation of the criteria document takes an average of two years, usually involving at least two drafts which are first peer-reviewed at scientific workshops and then issued for public comment and reviewed by the Clean Air Scientific Advisory Committee (CASAC). The criteria document for sulfur dioxide and particulate matter has involved the detailed review (and in some cases data reanalysis) of several thousand studies. The document now involves four volumes and almost 1500 pages. As noted in the previous discussion on the NO₂ NAAQS, the process also involves the preparation of a staff paper interpreting the evidence in the criteria document for use in standards setting and public and CASAC review of the staff paper. A minimum of two review cycles on the staff paper is usually required. Although this process is necessarily time-consuming, it is extremely important that all areas of medical uncertainty be carefully evaluated both by EPA and by the scientific community before any major shifts are made in standards and related regulatory programs. The Agency places high priority on developing standards which are based on scientifically credible and supportable evidence.

Finally, the preparation and review of the regulatory impact analysis which must accompany any significant change to a NAAQS also contributes to the time it takes to revise the NAAQS. This has become even more significant as a result of the need to prepare a benefit/cost analysis as required by Executive Order 12291. The current status of the reviews of each of the NAAQS is detailed below:

- a. Photochemical oxidants (ozone). This review was completed on February 8, 1979, with the promulgation of a revised standard.
- b. Carbon monoxide. Work on the criteria document began in June 1978. A revised standard was proposed on August 18, 1980, and final promulgation is expected next year.
- c. Hydrocarbons. Work on an abbreviated criteria document began in December 1977 and a proposal to revoke the present standard, which was originally developed as a guideline for attaining the 1971 NAAQS for photochemical oxidants, was published in May 1981. The target for final promulgation is by the end of the year.

- d. Particulate matter. Work on the criteria document began in early 1978. CASAC is scheduled to review the final draft of the criteria document and a second draft of the staff paper in mid-November. The target proposal date for revised standards is in the Spring of 1982.
- e. Sulfur oxides. The criteria document is combined with particulate matter, and closure with CASAC is expected at the November meeting. CASAC has reviewed on outline of the key elements to be addressed in the staff paper, with the initial review of the full staff paper planned in the Spring of 1982. Proposal of revised standards, if necessary, is anticipated in late 1982.
- f. Nitrogen oxides. See discussion above related to the short-term standard for NO₂.
- . A requirement that EPA approve or disapprove new State Implementation Plans within six months after they are submitted -- but the Agency completed only one of the 51 plan reviews on time;

Status

We agree that EPA's approval/disapproval process for State Implementation Plans (SIPs) has been time-consuming, and that we have not met statutory deadlines for approval and disapproval of SIPs. As noted by many who have testified before Congressional committees, there are several reasons for this situation and several solutions:

Reasons:

- a. The Clean Air Act, itself, requires States to develop SIPs, which must contain complex analyses of air quality impacts of sources and control strategies in order to demonstrate attainment of the National Ambient Air Quality Standards. Under the Administrative Procedures Act, EPA must review these complex analyses and then propose its approval or disapproval, entertain comments, and prepare a final rulemaking. The review, proposal, public comments, and preparation of final rulemaking more often than not require more than the six months allotted under the Act.
- b. The Act requires that every revision to a SIP -- including those that affect only one source -- be submitted to EPA for approval. This has resulted in a large number of actions that EPA must review and take rulemaking action on. The immensity of the workload itself is in large part responsible for the delayed action on many SIPs and revisions.

Solutions:

a. To clean up the backlog of SIP actions in EPA, we have undertaken several experimental processing techniques to expedite the processing of the SIP actions. These techniques will shorten the time necessary to complete rulemaking actions, provide States with EPA formal comments on a more timely basis, and reduce the uncertainty felt by industry and States regarding EPA's position on specific issues. EPA published a notice concerning these techniques in the Federal Register of September 4, 1981 (46 FR 44477).

b. Representatives from industry, State and local air pollution control agencies and other organizations, as well as this Administration, have outlined issues for consideration in amending the Clean Air Act. Those issues address the reduction of the Act's burden on States in the kind, number, and complexity of the SIPs and revisions that must be submitted for EPA approval.

c. The National Commission on Air Quality also recommended that Congress "... consider appropriate revisions to Section 110 of the Act ... to eliminate unnecessary Federal-State duplication and unnecessary Federal oversight of the State implementation plan process." (To Breathe Clean Air, p. 57, recommendation No. 29.)

EPA's experimental processing techniques in the short run and the Clean Air Act changes in the long run should greatly reduce, if not eliminate, the delays in processing SIPs that we have experienced in the past.

- A requirement that EPA impose by August 1979, noncompliance penalties on all stationary sources violating air quality standards -- but the Agency so far has served notice of noncompliance on only a few sources, and has not imposed penalties on any;

Status

EPA published proposed noncompliance penalty regulations in March 1979 and received numerous comments raising several complex issues, especially regarding the penalty calculation provisions. Final regulations were promulgated in the Federal Register of July 28, 1980 (45 FR 50086). The total direct cost of developing these regulations was five person-years plus \$375,000.

Section 120 is a complex and resource-intensive section to administer, especially given the multiple opportunities afforded the source owner for adjudicatory hearings. In light of the resource burden, EPA found it necessary to

establish a priority scheme for issuing notices of noncompliance, giving highest priority to those sources not in compliance with an acceptable Federal or State compliance schedule. In addition, to provide for a more orderly implementation, EPA set January 1, 1981, as the date on which it would begin issuance of notices.

Prior to January 1, 1981, many of the violating sources reached agreement with either EPA or the State on an acceptable compliance schedule or actually came into compliance.

From January to April 1981, EPA issued eleven notices of noncompliance. Of these cases, two are in hearings or appeals, two sources achieved compliance within thirty days of the notice, four paid or agreed to pay penalties, and three are in settlement negotiations. To date, EPA has collected over \$42,000 in penalty payments.

- An authorization for separate high altitude emission standards beginning in 1981 -- but the Agency did not establish the standards in time for them to take effect before 1982;

Status

A regulation establishing interim high altitude emission standards beginning with model year 1982 was promulgated on October 8, 1980. The Agency was unable to publish mandatory high altitude standards with sufficient lead time to include model year 1981. A rule identical to the 1982 standards was published for 1981, but it was a voluntary program.

- A requirement that EPA report to Congress by October, 1978 on the economic impact and technological feasibility of the 1984 high altitude emission requirement -- but the Agency has not made the report;

Status

This report is currently undergoing final preparations at the staff level; after Agency review, it should be finalized and submitted to the Congress before the end of 1981. The delay is partially due to uncertainties about the difficult technological problems posed by the 1984 high altitude requirement, and also to the Agency's desire to evaluate manufacturers' experiences with the interim standards.

- A requirement that EPA report to the Congress by August, 1978, on the advantages and disadvantages of establishing a new system of economic incentives to control nitrogen oxides from stationary sources -- but the Agency has not made the report;

Status

EPA submitted this report (Attachment I) to Congress in January of 1981. The report took considerably more time to complete than was anticipated originally. Since the technology to control NO_x is still under development, a great amount of time was spent researching control alternatives and estimating their costs. In addition, relatively late in the study flaws were discovered in the costing methodology used by our contractors, necessitating the reworking of several analyses.

- A requirement the EPA report to Congress by August, 1979, on economic incentives as a means of pollution control -- but the Agency has not made the report;

Status

In preparing this report, it was found that although a good deal of theoretical work had been done on incentive approaches, virtually no thinking had gone into how to implement them. I am referring to such questions as strategic bidding or anti-competitive behavior on the part of market participants, defining marketable permits (entitlements) in terms of duration, denomination, who the participants will be, future operations (if any), allocation of permits, geographic distribution problems, etc. Other important issues also had never been addressed, such as, the administration of the program, technical concerns over emission inventories and how emissions are to be measured (hourly, daily averages, etc.). As a result, the analysis has been very time-consuming.

Moreover, the Clean Air Act requires that this report be jointly submitted to Congress by EPA and the Council of Economic Advisors (CEA). A draft report was prepared prior to my taking office, but it was not approved. EPA and CEA staff are now continuing to redraft this report.

- A requirement that EPA report to Congress by January, 1979 on the public health and welfare effects of odors -- but the Agency has not yet made the report; and

Status

The report was submitted to Congress on February 19, 1980 (Attachment II). We concluded that odor problems could be best dealt with at the State and local level and recommended that no Federal regulatory program for odors be initiated.

- . A requirement that EPA, in conjunction with the Department of Labor, report to Congress, by August, 1978, on the effect of the Clean Air Act on employment -- but the Agency has not yet made the report.

Status

EPA has not submitted a report to Congress, in conjunction with the Department of Labor (DOL), although we have submitted material to DOL on this subject regularly.

ATTACHMENT I

United States
Environmental Protection
Agency

Office of
Planning and Management
Washington, DC 20460

January 1991



An Analysis of Economic Incentives to Control Emissions of Nitrogen Oxides from Stationary Sources

Report of the Administrator
of the Environmental
Protection Agency to the
Congress of the United
States In compliance with
Section 405(f) of Public Law
95 - 95 The Clean Air Act,
as Amended

ATTACHMENT II

REGULATORY OPTIONS
FOR THE
CONTROL OF ODORS

A Report to the Congress of the United States

Mandated by Section 403(b)

of the

CLEAN AIR ACT AMENDMENTS OF 1977

Prepared by

Strategies and Air Standards Division
Office of Air Quality Planning and Standards
Environmental Protection Agency
Research Triangle Park, N.C. 27711

1979

Senator STAFFORD. Thank you very much, Senator Hart.

The Chair would like to go ahead and finish the hearings this morning for everybody's sake. Senator Moynihan has had no time yet and would be recognized next. The Chair has already reserved the right to members to submit questions in writing. The Chair has a few more questions to ask on a second round.

Senator Mitchell, do you have further questions?

Senator MITCHELL. Well, I did, but I don't want to prolong this. Senator STAFFORD. We will keep it going.

Senator MITCHELL. I could submit them in writing.

Senator STAFFORD. In that event, Senator Moynihan, the floor is yours.

Senator MOYNIHAN. Thank you, Mr. Chairman.

I will confine myself to one topic in order to move along, and we can submit some other questions in writing.

I would like to raise the questions of the superfund, which this committee was responsible for creating a year ago, for the elimination of toxic wastes. It is a fund that is provided by a tax on chemicals, a certain list of chemicals. As they are produced, producers pay a tax into this fund. And it was the chairman of our committee who most particularly took the initiative and made possible this legislation during the postelection session last year.

And we regard, I think this committee would regard, these as dedicated moneys. There is a special tax for the purpose of cleaning up toxic wastes. And the initiative is especially important to me because the event that led to this fund was the Love Canal discovery in Niagara County. That was sort of the catalyzing event that made us realize we have toxic waste dumps all over the country. We find them and find out who is responsible and go through 5 years of lawsuits. Our proposition is clean them up first and have the lawsuits later.

We think of these as dedicated moneys just as we do the highway trust fund. Yet, we find the administration not evidently intending to spend these moneys at all. President Carter proposed a \$250 million budget. Reagan then came in with a \$200 million budget and now a \$176 million budget. What we see is 140-percent reduction from President Carter's proposals, and in point of fact a proposal to spend in fiscal 1982, \$176 million, when the revenues will be \$397 million. What some of us feel is what we are seeing here is what was attempted unsuccessfully in social security, which is steal the money from funds dedicated to one purpose for the simple purpose of offsetting a budget deficit elsewhere.

I would like to ask you do you think it is right, when the superfund which will produce almost \$400 million this year for cleaning up toxic wastes, that you propose to spend less than half that, or have you a different view?

Mrs. GORSUCH. Well, Senator, let me share with you my understanding of the superfund. It is indeed dedicated money raised from a special tax for a specific purpose. We clearly understand that. Our administration considers the implementation of superfund certainly among its most significant priorities. We are fully aware also that the moneys appropriated by Congress for this purpose will not remediate every hazardous waste site throughout the country. It was never the congressional intent. It was to address those

priority sites that posed the greatest hazard to the health and welfare of the people of this country. We have a strong commitment to fulfilling that congressional intent and feel there is a proper purpose of the Federal Government interfering in this time and using the funds that have been earmarked for this purpose.

As you probably are aware, in addressing the cleanup of any hazardous waste site, and they do differ in characteristics one from another, the first step will be in terms of planning, second in terms of design, and third in terms of real construction or cleanup work. And I think it makes sense we will see in the initial years the lesser flow of actual moneys which are in the planning and design functions, and in latter years the larger flow of money where actual construction costs begin to be part of the overall program. That is just an overview.

Senator MOYNIHAN. Has the Office of Management and Budget told you how much money you can spend from the superfund this year?

Mrs. GORSUCH. This year, no.

Senator MOYNIHAN. Are you free to spend as much as you like?

Mrs. GORSUCH. I am certainly free to spend as much as I like.

Senator MOYNIHAN. How much do you intend to spend?

Mrs. GORSUCH. That, Senator, I would have to refer to the people who advise me in terms of specific dollars.

Senator MOYNIHAN. You mean somebody else decides?

Mrs. GORSUCH. No, Senator. I would hope you respect I don't carry these figures in detail in my mind.

Senator MOYNIHAN. Let me say the fund is limited to revenues of roughly \$397 million. Do you expect to spend \$397 million?

Mrs. GORSUCH. No, we don't.

Senator MOYNIHAN. Do you expect to spend \$396 million, \$395, \$394? I mean do you know what you are talking about?

Mrs. GORSUCH. \$200 million has been appropriated by Congress.

Senator MOYNIHAN. It is proposed this be reduced further. Do you mean to go along with that proposal? I told you the first budget request of the President was \$200 million. It is now \$176 million. Is that your idea of what should be spent?

[No response.]

Senator MOYNIHAN. Has this subject come to your attention, that there is a superfund?

Mr. GORSUCH. Senator, I appreciate your good wit.

\$200 million was appropriated by Congress. If the President's proposals are enacted by Congress, it would be affected.

Senator MOYNIHAN. And that is satisfactory to you?

Mrs. GORSUCH. In terms of our proper implementation of that law, yes, I think we can conform with the desires of Congress to meet the planning, design.

Senator MOYNIHAN. You find this new proposal of a reduction satisfactory, and do you support it?

Mrs. GORSUCH. Yes, I do.

Senator MOYNIHAN. Let me say I have been in the subcabinet of four previous Presidents, and one of the things you learn is there comes a time when things are being done to your program which require you to resign. Is there any point at which the toxic waste

program would be so reduced as a budgetary matter that you would, in fact, resign?

Mrs. GORSUCH. Senator, I think it is highly unprofitable to engage in that kind of speculation.

Senator MOYNIHAN. You mean nothing would make you resign?

Mrs. GORSUCH. I think the President's proposal is to make a reduction in the budget of 12 percent. I think although the proposal is to do that account by account, there are ways we will be discussing with the Appropriations Committee which can tailor the reductions more adequately to our needs.

Senator MOYNIHAN. Will you have the kindness to understand that it is this committee that passed that legislation and dedicated those revenues, and we expect you to speak to the matter with us. Now we are serious. We are not going to let money be stolen from this to offset something the President's people have created all on their own, and we do not expect the Administrator will allow this to happen. There are more important things than getting through the next 12 months or so. You will have to live with the reputation you leave behind. And there are things on which it is not worth staying. And I have to tell you it is the impression of many members of this committee that you are getting close to the point where other persons who have preceded you would have resigned. I am not asking you to do so, but I am asking you to know in the life of an honorable public servant there comes that time, and I haven't the doubt in my mind, and when it comes you will recognize and you will give it thought.

Mrs. GORSUCH. Senator, I appreciate your confidence in my honor and integrity.

Getting back to the substance of your question of implementing superfund, we have every intention of using those moneys that are appropriate by this Congress for that purpose in addressing the most hazardous waste sites that we can identify on a national basis.

Senator MOYNIHAN. I would like to remind you that those amounts are continually being reduced at the behest of the administration, and when they do so it is assumed they do it with your approval. And if you do approve, it seems to me you have more to explain to this committee than you have done. And if you don't approve, I think you ought to consider resigning.

Mrs. GORSUCH. I appreciate your advice.

Senator MOYNIHAN. Thank you, Mr. Chairman.

Senator STAFFORD. Thank you, Senator Moynihan.

Senator Simpson.

Senator SIMPSON. Welcome to the pit. It is a spirited group.

Mrs. GORSUCH. Yes, sir, it is indeed.

Senator SIMPSON. When I was a member of the minoirty, I was always asking people to resign. And when the time comes, as my good colleague from New York says, the time to resign, I hope you will not recognize it.

So, enough of that. Pat will catch me later and discuss this with me.

I recognize there have been some rather shrill criticisms of the EPA in the media. However, I can't help but think it is a bit premature to go into budget considerations once more. That seems

a little straining to me in the process and a bit premature. I am of the understanding, or is it a misunderstanding, that the final budget figures of EPA will not be completed for some time. Is that correct?

Mrs. GORSUCH. That is correct, Senator.

Senator SIMPSON. It seems like I remember that is kind of what the system is about.

Mrs. GORSUCH. It is a kind of system.

Senator SIMPSON. So you have been bouncing figures off the wall and they have been received by catchers' mitts, by people in America who have decided. Is that the way I perceive it is?

Mrs. GORSUCH. I think that is correct.

Senator SIMPSON. In Wyoming, we had a name for it. I would share it with you if it weren't a family show. You are going to complete a budget and you are going to have a complete further review within your administration and a consideration of the proposed budget cuts; is that not correct?

Mrs. GORSUCH. That is correct, Senator.

Senator SIMPSON. And go over once again what the President has asked, and to do just as you are doing, as I will in veterans affairs if I took a 12-percent cut out of a \$25 billion budget. We will have a few hearings on that; is that right?

Mrs. GORSUCH. That is correct, Senator.

Senator SIMPSON. So I can understand the committee's interest in the function and structure of the Environmental Protection Agency, yet I am concerned that such exercises that we are doing today will only increase the difficulty very much in the potential problems that always accompany a rather extraordinary thing. It is called policy changes of a new administration. There is nothing more mystical about it than that. I don't think we ought to raise it to something more vile or onerous than that. In all my marvelous experience in this place in less than 3 years, I have never met anybody in any agency that just didn't tell me that all of the problems of the world would be solved with more staff and more money, without exception, and that the cataclysmic effects will be hideous if there is less staff and less money. Enough of that. The meter is running over there.

But I just have a few comments. In your testimony regarding the EPA's Radiation Program Office, you know I have some rich feelings about that operation there, they are not as pleasant as the ones I just related. I agree with your characterization of the past performance of the office of radiation programs. It has been terribly frustrating to me to see these repeated failures on the part of the Agency to meet its timetables on the development of standards that then are to serve as the basis for later actions of other Federal agencies, including the Nuclear Regulatory Commission and the Department of Energy. I believe that you and Dr. Hernandez are to be commended for your early attention to the problem. I couldn't agree with you more on our priorities for that office.

But if EPA will get on with the job of developing its standards for low-level radioactive waste, instead of saying here is a problem, let's throw more money on it, and for uranium mill tailings disposal, this would do a great deal to ease the problems of agencies, one that I through the auspices of our good chairman, Mr. Stafford,

know about, and that is the Nuclear Regulatory Commission. They must develop the detailed regulations in each of those areas.

I was particularly gratified to hear you say you intend to promulgate general environmental standards for inactive uranium mill tailings by March of 1982. Is that correct?

Mrs. GORSUCH. Yes, sir.

Senator SIMPSON. And I agree that is a substantial improvement over your earlier project of January 1983. I appreciate that, and I think you and Dr. Hernandez are to be commended for that accomplishment.

Now that you have made these efforts in identifying solutions to the problems of the radiation programs office, with the consultation and approval of the chairman and the ranking minority member, Senator Hart, we will schedule a hearing by the Nuclear Regulation Subcommittee to review in detail the problems of that office and your plans for further improvements. I will be getting in touch with you on that. We will do it in a way to give you an opportunity to properly prepare. I believe you are to be commended for your efforts thus far in this area. We will begin those arrangements.

I guess that concludes my remarks, Mr. Chairman, except to note that as I entered and reentered the Chamber, I have the distinct notion that there has been a faint odor of sour grapes. Thank you very much.

Mrs. GORSUCH. Thank you, Senator.

Senator STAFFORD. Thank you very much, Senator Simpson. The Chair can't help but note that with today's hearing, and ending with people like Senator Moynihan on one side and Senator Simpson on the other it should be a pretty good television show.

Senator SIMPSON. It should be.

Senator STAFFORD. Mrs. Gorsuch, I have a couple final questions I would like to ask, and then we will try to bring this long day to an end. Senator Chafee may have one of two more questions as well.

First of all, this document that has bothered everybody somewhat, we do have it, and if you were willing it might be desirable for your staff to examine it, and then if its not authentic you could tell us so. That would rest any rumors that have caused members of the committee to call this meeting. Would you be willing to have a look at that?

Mrs. GORSUCH. Senator, I think more to the point is our 1983 budget figures, like every other department and agency, are very much in the negotiation stage. The impressions that some have—Mr. Baucus—that percentages are somehow cumulative is just arithmetically incorrect. A percentage is premised on a base.

The other really important fact is that I believe we can operate more efficiently with fewer resources and will be approaching the management of the Agency with that in mind. We will be managing, again, as I say, focusing on results, not as Senator Simpson indicates, by saying here is a problem, throw more money on it. Senator Chafee pointed out we have had problems with developing toxic guidelines since 1976. We have thrown an enormous amount of money at it and still only have one out. That is where we have to focus on these backlogs.

Senator STAFFORD. That didn't answer my question.

Mrs. GORSUCH. Getting back to the original document, Senator, I think whether or not it is an accurate one, the point is it may or may not reflect any reality that is offered by the President to this Congress in January 1982.

Senator STAFFORD. We understand that, but we were trying to put it to rest.

Mrs. GORSUCH. I appreciate that, and I will be happy to have our staff look at it.

Senator STAFFORD. I was gratified to read in your statement that two paramount responsibilities of the Environmental Protection Agency are, first, protection of health and welfare, and second, the faithful implementation of the intent of Congress as expressed from law. The most recent environmental legislation which our people have already talked about somewhat that we have enacted is the superfund law. All members of this committee were active in developing that law, although I like to thank my colleague from West Virginia, and this Senator played a special role, and of course I blush a little as I say that speaking for myself. I would like to observe the superfund law contains numerous provisions for the protection of public health, registry of disease and exposure to toxics are required as an inventory. Preliminary investigations can be conducted and diseased persons can be given tests and treated where there is an emergency. Those persons can be in a Government hospital or care. All these functions are now vested in the Department of Health and Human Services. To assure these extremely important provisions were implemented, this committee sought from OMB, and was assured, HHS would receive \$3 million for these functions in 1981. That year has ended. In addition, we stated in our budget report in February that HHS was to receive \$3 million. This intention was communicated to personnel at EPA as well.

My understanding is that, despite these expressions, the Department of HHS has received no money whatsoever from superfund, and all of the Department's requests have been refused by the Environmental Protection Agency.

So I have two questions. First, to the best of your knowledge, have you or any members of your staff ever voluntarily sought the advice of this committee or any member on the implementation of the superfund law?

Mrs. GORSUCH. I am sorry, could you repeat that?

Senator STAFFORD. Have you or any of your staff voluntarily sought the advice of this committee or any of its members on the implementation of the superfund law?

Mrs. GORSUCH. Senator, I can only speak for myself. Certainly I appreciate any advice that you may have, and if you would like to extend it at this time it would be most welcome. I have not, to my knowledge, personally solicited the advice of any member of the committee as to implementation.

Senator STAFFORD. Second, when will the Department of HHS be provided the \$3 million which was committed for fiscal year 1982? And I won't ask you about fiscal year 1983.

Mrs. GORSUCH. Senator, first of all, let me say I have no idea any request was received, much less turned down. EPA does have the

obligation to chair an interagency budgetary group to decide on what the needs of the other agencies involved in superfund are for the coming fiscal year, and we intend to do that. But, to my knowledge, we have not received any formal request from HHS.

Senator STAFFORD. Would you be willing to have your staff look into this?

Mrs. GORSUCH. I certainly will.

Senator STAFFORD. Finally, I am especially concerned about reports, again these are the rumors, of drastic reductions in funds and people to enforce environmental laws. Documents purporting to convey your plans for fiscal year 1983, for example, show reduction of 31 percent in personnel to enforce the Clean Air Act. The same document projects a 50-percent decrease in violation notices expected to be issued in 1983 compared to notices in 1982; a 30-percent decrease in administrative orders expected; and a 67-percent decrease in court actions. Now I just say these are reports that add fuel to the rumor factory. Senator Mitchell got into them a bit. I am not going to ask you to comment on any of the specific figures. I would like to ask you how you plan to sustain the current level of compliance not only in the air program but in the water pollution, hazardous waste disposal, and other programs in the face of such substantial work force reduction and no increase in Federal assistance to States, whose own budgets are now strained?

Mrs. GORSUCH. Well, Senator, that is presuming a substantial reduction and it is a presumption I am not going to make. As I indicated, I think there is a real opportunity to refocus our enforcement efforts, and I have directed my staff to do that. We will be looking for environmental results and measuring our performance in terms of environmental cleanup. That will be our highest priority, not numbers of cases.

The second highest priority will be repeat offenders. We do consider the proper implementation of superfund to include pursuit of responsible parties through lawsuits or other means to make sure the superfund moneys go as far as possible and are not expended where there are other responsible parties that can pay for the cleanup.

Senator STAFFORD. Thank you.

Senator Chafee?

Senator CHAFEE. Thank you, Mr. Chairman.

Mrs. Gorsuch, your opening statement laid considerable stress on improved administration of your agency, steps you were going to take, better supervision, managerial techniques, and so forth. Yet in light of that, I find it difficult to understand of your six Assistant Administrators, two have been confirmed, one comes up tomorrow, and three remain empty of those slots, and three very significant ones. I think each is significant. One is R. & D. and one has to do with water and the third I believe is solid waste. Now what are your proposals? You have been in office now. We are really getting to the end of the calendar year, although in fairness you have not been in office that entire time, I think since May. How are you coming and what is the prognosis for filling these slots?

Mrs. GORSUCH. Well, I share your impatience, because when you have that first line of managers you really have an opportunity to run a better managed agency. As you know, Senator, each of those

Assistant Administrators is a Presidential nomination, and the process for clearance and for consideration for nomination is a lengthy one, including FBI investigation, full field in some cases, and that goes back a long way. In others, people merely have to update. We are anxious to get our first line of people on board as soon as possible. It is not a calendar I can control in large measure.

On regional administrators, which is a calendar more directly under my control, as you know, there are 10 regional administrators, and 9 appointments have been completed out of the 10. So I am pleased with that track record.

Senator CHAFEE. I hope you can press with the others. I understand we have a confirmation coming up tomorrow, which will only be three out of six, with the others remaining open.

Now I would like to ask you about Superfund a bit, again getting to the accomplishments of the tasks of your agency, setting aside budget matters completely. A national contingency plan was due in June. Where is that?

Mrs. GORSUCH. It is being submitted. I would say it would be out next week. It is on my desk.

Senator CHAFEE. You mean it will get up here? It will be submitted, completed?

Mrs. GORSUCH. It will be completed. The first stage, as I recall, that the Executive order directs is the OMB review and the other agency review, the other affected agencies.

Senator CHAFEE. So it hasn't gone through them yet?

Mrs. GORSUCH. No, it has not.

Senator CHAFEE. So it is quite a ways from being completed.

Mrs. GORSUCH. As you might recall, and I am a little fuzzy here, completion will follow congressional approval as well as the regular notice/comment period, proposal, and final rulemaking that is required under Federal law. So in terms of when it will be a complete plan which can only be changed by another rulemaking I think is somewhere down the line. In terms of when it comes out of our agency which had the lead responsibility in coordination and drafting, it should be released to the other agencies next week, and will certainly be available to you if you request.

Senator CHAFEE. Have the States completed their requests for prior sites done?

Mrs. GORSUCH. That date, as I recall, is December 15.

Senator CHAFEE. Have you got your Superfund staff in place in the Agency?

Mrs. GORSUCH. Recent changes have been made, but no, we are definitely missing the Assistant Administrator for Wastes, which has Superfund responsibilities. Yesterday, I was pleased to make announcement that Bill Hedaman who had previously been in the Office of Federal Activities will be heading up the office of Superfund responsibilities.

Senator CHAFEE. He will be the Assistant Administrator for solid waste or head the Superfund?

Mrs. GORSUCH. Head the Superfund.

Senator CHAFEE. That is a good appointment. That is fine.

Now I would like to get back briefly to 404. When Mr. Civiletti was Attorney General, he submitted an opinion, it was an advisory opinion. It said that EPA had the jurisdiction of 404 and had the

call over the Army Corps of Engineers. I think you are familiar with that. This refers back to my question about you are the lead in 404 matters. Are you comfortable with that opinion?

Mrs. GORSUCH. Senator, I would have to reserve the right to really sit down and examine that before I really give you an answer.

Senator CHAFEE. So, in your judgment it is?

Mrs. GORSUCH. I have not really examined that opinion per se and come up with any feeling on it one way or the other.

Senator CHAFEE. There currently is no current underway in your agency for you to no longer be the top agency in that review, in your judgment?

Mrs. GORSUCH. Not to my knowledge.

Senator CHAFEE. All right, fine. Thank you very much.

Senator STAFFORD. Thank you, Senator Chafee.

I think this will bring the hearing to a close. We know it has been a long and tedious time for you. We appreciate your coming up here. The committee, we assure you, is behind your efforts to carry out the legal duties that the law imposes on you.

Mrs. GORSUCH. Thank you. I appreciate it.

Senator STAFFORD. The committee will adjourn the hearing subject to call of the chair.

[Whereupon, at 1:05 p.m., the committee recessed, to reconvene subject to call of the Chair.]

[Responses to written questions and a statement from the Natural Resources Defense Council follow:]



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE ADMINISTRATOR

NOV 2 1981

Honorable Robert T. Stafford
Chairman
Committee on Environment and
Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for your letter of October 15th.

As you requested, I have enclosed the answers to the questions which you attached to your letter.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Anne".

Anne M. Gorsuch

Enclosure.

APPEARANCE OF FAIRNESS

Q. The obligation of you and your staff is to assure that the laws which the Congress enacts are fairly and properly implemented. All of these laws entrust you with great discretion, which can, in turn, be delegated to your assistants or subordinates. With them, as with you, it is vitally important that fairness and objectivity be maintained.

One check which we install to assure such fairness is the confirmation by the Senate of some officials. Those persons who are to make important line decisions are required to go through the process of confirmation.

Earlier this year, you told this Committee that you were reorganizing the Agency, and creating some new positions. We agreed to this reorganization, but on the condition that those occupying the new post would not exercise line authority. We were assured that they would not.

Several weeks ago the Washington Post reported that one of these appointees not only made a line decision, but an extremely important one at that. He was reported to have closeted himself with industry representatives and settled one of the most important law suits now pending at the Agency. He not only settled the suit, he did this in a meeting from which he excluded the Federal Government's own lawyers. The lawyer from the Justice Department resigned in protest.

Another recent article in the New York Times reported that a senior official of the Agency met with about 35 persons to discuss what decision should be made on certain chemicals, alleged to be toxic. Aside from a few Agency civil servants and one member of the House staff, all persons in that meeting were reported to be industry representatives.

These are two examples of many reports which we have read or heard. The actions may be perfectly legal. And the decisions may be perfectly fair. But the appearance which they present is not one of either fairness or neutrality.

The first official whom I mentioned has since resigned. Do you plan to name a successor? If so, do you intend to ask that the White House designate that post as one subject to confirmation? If not, why not?

Secondly, are you concerned by the appearance which these kinds of meetings presents to outsiders?

APPEARANCE OF FAIRNESS

- R. I have not yet determined when a replacement will be named. At the time you mention, the Acting Associate Administrator for Legal and Enforcement Counsel also had the dual responsibility as General Counsel for EPA, a post which has never been subject to Senate confirmation.

I am concerned about the mischaracterization of meetings agency lawyers have regarding litigation. There is nothing unusual about in camera discussions. Indeed, without them few cases, public or private, would ever be resolved. In the meetings to which you refer, no settlements were reached. Sometime later some settlements were agreed to, and these will be subject to scrutiny by other parties and the Court.

The other meeting to which you refer was one requested by an outside group to discuss questions of scientific matters. It was not unlike the many meetings this and other Government agencies entertain routinely with interested parties, whether upon the request of the party or others, such as a Member of Congress. Information was communicated; no decisions were made; and all relevant data will be spread out in the public record. My great concern is that persons continue to mischaracterize these types of meetings as somehow being illegal, unethical, or worse. When properly handled, as were these meetings, they serve a useful public purpose.

Question submitted by Senator Stafford

- Q. Not only with respect to enforcement but in several other areas you appear to favor turning over to states' more of the responsibility for environmental programs. For example, the 1982 agency work program, as well as the budget materials for fiscal year 1983, suggest that states are being asked to increase their efforts in controlling emissions of toxic pollutants.

How realistic is it to expect increased activities by the states in the absence of increased Federal assistance and in a regulatory arena where Federal action was initially required because of states' reluctance to act?

- A. Congress wisely recognized when passing the environmental statutes that national environmental objectives could not be met by Federal action alone. This original intent of Congress is one I intend to implement fully. We have a duty not only to "buy" the cooperation of the States through Federal aid, but also through sensible and flexible regulatory programs delegated to responsible State authority, pursuant to the Congressional intent.

RESEARCH AND DEVELOPMENT

Q.1. With more and more chemicals being introduced into the environment through various media each year, the potential for adverse effects on public health are growing exponentially. This situation points to the need for more research on the health effects of such chemicals. In contrast, the Agency's health effects research program is decreasing every year. Do you anticipate this downward trend continuing?

If so, where will the necessary health effects research be done? If not, how will you focus the health effects research program to adequately address such chemical contaminants?

A.1. There has been a decrease in health research resources from Fiscal Year (FY) 1980 to FY 1981. There has also been a further cut from FY 1981 to FY 1982. Although the health research resources have decreased, the Health Effects Research Program retains the essential expertise and capabilities in the scientific disciplines needed. We are confident that the EPA health research program is doing what needs to be done.

The responsibility for health effects testing of chemicals is as follows:

1. The health effects testing of new chemicals is a responsibility of the manufacturer under the requirements of the Toxic Substances Control Act (TSCA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).
2. The health effects testing of existing chemicals is not primarily the responsibility of EPA but that of the manufacturer and the National Toxicological Program (NTP).
3. The Agency's health research program will continue to develop and validate chemical testing methods which will be used by chemical manufacturers and other research and testing organizations. Testing of hazardous mixtures needs development of methods. This effort is supported in our water research program and is a major part of the air research program. The information and data used by the Agency related to health effects of chemicals in the environment is derived not only from the Agency research laboratory but also relies heavily on other Federal programs, such as the National Toxicology Program, State health programs, and academic and private scientific research institutions.

Questions submitted by Senator Stafford

- Q. 2.(a). You have stated that an effective hazardous air pollutant program is one of your top priorities. In your view, should health hazards other than cancer be evaluated when assessing the health risk of hazardous air pollutants? For example, should effects on reproductive or neurobehavioral effects such as impaired learning ability in children be included in such assessments?
- A. 2.(a). Yes. In fact, the health assessment documents that are currently being prepared for the Office of Air Programs include an evaluation of all health risks including cancer, reproductive effects, neurobehavioral effects, and other health endpoints. An effective hazardous air pollution program must consider all potential health effects associated with environmental exposures in order to be a comprehensive and effective program.
- Q. 2.(b) What will be the nature and focus of EPA research in these areas, if any, over the next two years?
- A. 2.(b) EPA's plan for health effects research for the hazardous air pollutants calls for a broader approach to health and general toxicity than in the past. Previously, carcinogenesis and mutagenesis have been the focus of both regulatory and research activity. At this point, extensive work has been done in these areas by EPA and other agencies. In accordance with the broadening of the regulatory program, the health effects research will give relatively greater emphasis than in the past to neurotoxicity and its behavioral manifestations, teratogenesis and reproductive effects, respiratory diseases, and disorders of the immune system with associated susceptibility to disease.

Questions submitted by Senator Randolph

- Q. 1. There are standards under subtitle C for existing incinerators and surface impoundments. When will permits for such facilities begin to be issued? The interim status regulations are woefully inadequate for these facilities.
- A. 1. The interim status standards were not designed as full technical standards. As such, they were never meant to do the whole job of hazardous waste management.

The permitting standards for incinerators and surface impoundments were promulgated in January 1981 as part of the general permitting regulations for hazardous waste treatment and storage facilities. As required by Section 3010(b) of the RCRA, these standards were scheduled to take effect six months after the date of promulgation. However, because of the great many adverse comments on the suitability of the incinerator and surface impoundment regulations for existing facilities, EPA decided to suspend and re-examine the rules for existing incinerators and surface impoundments, although they will continue to be used as a basis for issuing permits to new facilities.

Final permitting standards for existing incinerators and surface impoundments are scheduled to be developed by October 1983. More specifically, EPA has begun Regulatory Impact Analyses (RIA's) for these regulations in accordance with the President's Executive Order 12291. As stipulated, these RIA's are currently more fully defining the problem to be addressed by the regulation. They will further develop regulatory alternatives and perform cost-benefit analyses to determine which alternative maximizes net benefits. The RIA's are scheduled to be completed by December 1982. Subsequently, the Agency has target dates for proposing rules by April 1983, receiving public comments, and finalizing the regulation by October 1983.

Questions submitted by Senator Randolph

- Q. 2. The subtitle C land disposal regulations are needed at the earliest possible time. How soon can they be promulgated? What steps are being taken to assure that such regulations discourage landfilling of inappropriate substances like liquid organics and encourage the move to incineration, recycling, and other alternatives?
- A. 2. The Agency agrees that it is important to issue the Subtitle C land disposal regulations as soon as practicable. Although regulations are in force (Part 267, promulgated February 13, 1981) around which new facilities may be permitted, existing land disposal operations cannot be evaluated and permitted until regulations under Part 264, proposed in December 1978, and again on February 5, 1981 are finally promulgated. The comment date on the February 5 proposal has just closed. Approximately 100 sets of comments, many of them voluminous, have been received. Although review and analysis of these comments will take some time, an initial reading shows commenters roundly attacking the proposal as unworkable. If, upon further review, the Agency becomes convinced that the commenters are correct, then it may be necessary for the Agency to develop yet another approach to regulating this complex problem, and to repropose it. We believe such a reproposal, with all of the supporting documentation, can be issued by the end of 1982. Then, assuming only modest further alterations to the proposal as a result of hearings and comments, the final regulations could be promulgated in the fall of 1983 with an effective date in the spring of 1984.

With regard to the landfilling of liquids, current regulations (§265.314), set to become effective on November 19, will largely eliminate this practice. However, because of implementation difficulties being experienced by the regulated community, the Agency plans to suspend the implementation date of this prohibition for about six months while some facilitating amendments are issued. With regard to other inappropriate wastes, the Agency has already taken steps to limit and control the disposal of certain classes of wastes (§265.312 and §265.313). As additional wastes are identified for which disposal is demonstrated to be an unsound practice, steps will be taken to ban or limit such practices as well.

Questions submitted by Senator Randolph

- Q. 3. You say you are "managing for environmental results." In the hazardous waste area, I presume that would not mean shutting down every hazardous waste facility in the country, but being sure that enough adequate facilities were permitted and new facilities sited to handled the need.

If that is your goal, as it is mine, the recent suggestion from top EPA staff that the financial responsibility requirements be withdrawn threatens that goal. Insurance or other evidence of financial responsibility for the operating and closure phases of hazardous waste facilities is clearly required by subtitle C and by the superfund law. Everyone in the Congress and the regulated community has always known that. Such assurance that public liability will be covered is also the key to acceptance of a facility by a community nervous about having hazardous wastes in its midst. The financial responsibility requirement should not be dropped, especially when a strong market for such insurance is developing. How could a suggestion so inconsistent with the needs of this program been put forward by EPA?

- A. 3. Section 3004(6) of RCRA directs EPA to develop financial responsibility standards as may be "necessary or desirable." On January 12, 1981, EPA promulgated standards implementing this section. Those regulations included a requirement that owners and operators of hazardous waste management facilities obtain third-party liability insurance. EPA is considering withdrawing these liability insurance requirements. The Agency, in keeping with the President's desire to eliminate unnecessary Federal regulations, has reviewed these requirements and has determined that they may not be "necessary or desirable" requirements under Section 3004 of RCRA.

The financial responsibility standards that the Agency has promulgated relating to liability insurance require that owners and operators carry insurance to cover liability claims for personal injury or property damage resulting from the operation of a hazardous waste management facility. Unlike the other standards required under Section 3004 of RCRA these standards would not directly prevent or minimize hazardous waste releases into the environment. Instead, the principal purpose of these standards is to require that an owner or operator assure that monies would be available to compensate third parties for damages that might result from the operation of his facilities. As such, these standards are very different from the other standards prescribed under Section 3004 of RCRA in that they do not directly impose location, design, construction, operation or other management requirements

Senator Randolph - Question 3 (continued - p. 2)

do not, as a principal purpose, prevent releases of hazardous wastes and thus protect human health and the environment, the Agency has re-examined the requirements and has questioned whether they are "necessary" to achieve the purposes of Section 3004 of RCRA.

In addition, the Agency also questions whether the liability insurance requirements are "desirable." First, the Agency does not have before it a record which demonstrates that there are a significant number of persons, injured as a result of the operation of active hazardous waste management facilities, who have not been compensated for claims of injuries or property damages that have been awarded by courts of law. Second, it may be inappropriate to rely upon the liability insurance industry as a "surrogate regulator" and, even if the Agency were to rely upon the industry to help ensure compliance with applicable regulations, it is not clear whether the industry could or would effectively do so. Third, it is possible that the imposition of an insurance requirement could lead to further undesirable regulations of the insurance industry at the State level, including the establishment of assigned risk pools of hazardous waste management facilities.

It is clear that there are also several advantages associated with the insurance requirement. First, the requirement would assure that there will be pools of funds to pay claims awarded by courts for compensation for injuries resulting from the operation of active hazardous waste management facilities. Second, the requirement may help reduce public opposition to the siting of new facilities. Finally, the requirement may provide an incentive to owners and operators of hazardous waste management facilities to operate their facilities in the best manner possible because the operators of better operated facilities might expect to pay smaller premiums.

All of these advantages and disadvantages need to be fully considered before reaching a final decision on this issue. Therefore, the Agency has deferred the effective date of the liability insurance requirement until April 13, 1982. During that period EPA intends to propose withdrawing that requirement and will allow for the public to comment on that proposal. After a thorough review of public comments a final decision will be reached.

Senator Randolph - Question 3 (continued p. 3)

With respect to closure and post closure financial responsibility we do not plan to remove these requirements for they relate directly to the prevention or minimization of hazardous waste releases into the environment. Existing regulations, which are now scheduled to go into effect on April 13, 1982, provide several means by which owners and operators may cover their liability. All of those means will continue to be available. Many owners and operators have argued persuasively that other standard business means of covering liability should be permitted by EPA's regulations. Therefore, we will be proposing that both insurance and an assets test be prescribed, by regulation, as qualifying for assumption of the closure/post closure financial responsibility. While we have not prejudged this proposal, it does appear that these are reasonable additions to our other alternatives. Notice and comment will precede any final decision by the Agency.

Questions submitted by Senator Randolph

- Q. 4. The provisions of subtitle C dealing for interim status of hazardous waste facilities do not allow for significant expansion of existing facilities without permits. How do you justify the policy of 50 percent expansion under interim status?
- A. 4. The subtitle C regulations as currently written constrain the types of changes that can be made at a facility during the interim status period. Over the past year we have found these provisions to be unnecessarily stringent. In fact, we have had a number of complaints that the current regulations virtually "freeze" existing facilities in their current patterns of operation until EPA issues a permit to the facility (which could be several years for some facilities). During that period, facilities cannot make changes that need to be made due to normal fluctuations in the course of business. It has been charged that the facilities are prevented from improving their operations and that the regulations unduly restrict industrial growth and expansion. As a result, these provisions have been a major concern of litigants who have petitioned for judicial review of these regulations in NRDC v. EPA.

Currently EPA is considering several changes to these regulations which would make them more flexible and workable. One of these changes would allow facilities to expand their design capacity by 50 percent during the interim status period. Under this concept owners and operators of such facilities would have to notify EPA six months prior to such a change. If EPA were concerned about the change in a particular instance, the Agency would then have the opportunity to call in the complete permit application and began permitting action. In this manner EPA would selectively decide how to allocate its permitting resources and would not be forced to process permits in all instances. At the same time facilities would not be constrained from making expansions until EPA issued a permit.

While we think this idea has merit, it is important to note that we are just considering proposing it at this time, and we will give the public an opportunity to review and comment on it before reaching a final decision.

Questions submitted by Senator Randolph

Q. 5. A recent General Accounting Office report prepared for Rep. Florio observes that "interim status" regulations for hazardous waste facilities are not adequate to protect public health and the environment, that most facilities are not even in compliance with these inadequate requirements, and that EPA's planned enforcement efforts will do little to correct these violations. What are you doing to improve this situation and provide adequate protection to the public from facilities covered by the interim status requirements? One thing I could suggest is the acceleration of issuing adequate final permits.

A. 5. The interim status standards for existing hazardous waste management facilities were not designed, nor are they currently being used, to do the whole job of managing hazardous wastes. In beginning to develop full permitting standards for the various types of facilities, EPA recognized that this process would take some time. As a result, the interim status standards were developed to establish basic, good housekeeping procedures for existing facilities. As such, these standards begin the job of effective hazardous waste management.

EPA has made progress, however, and is continuing to move forward in developing final permitting standards for new and existing hazardous waste management facilities. At the present time, final standards are in effect for all categories of new facilities. Permitting standards are also in effect for facilities that store waste in tanks, containers and piles, and for facilities that treat waste in tanks and containers. The Agency is immediately beginning to issue permits for these categories of facilities.

For the other categories of existing facilities (storage surface impoundments, incinerators, and land disposal facilities), EPA is developing final permitting standards as expeditiously as is possible.

Questions submitted by Senator Randolph

- Q. 6. The delay in publishing a revised National Contingency Plan under the "superfund" law continues to be a problem. Of course, the existing National Contingency Plan is still in force and emergency and remedial action can be taken under that. But a cloud is raised by some of the issues which seems to be delaying the revision. We have heard that one major question is how much to clean up areas contaminated with hazardous substances. You are preparing the revised Plan as a regulation and as such it is subject to Congressional review or even veto. An attempt to restrain States or local governments or private parties in how they conduct their clean-up efforts would surely draw a Congressional veto. Please tell us what is the current status of the Contingency Plan revision.
- A. 6. The draft revised National Contingency Plan (NCP) was sent to the Office of Management and Budget for review on October 20 and to other Federal agencies on October 21. In addition, a copy of the NCP has been delivered to the staff of the Environment and Public Works Committee for their review. I look forward to receiving any comments you or your staff may have on the Plan.

Questions submitted by Senator Randolph

- Q. 7. Your testimony discusses the situation you found at EPA and management changes you are making. There is a strong indication that you feel the Agency has been incompetently managed in the past. Is this a fair interpretation of your observations? If so, who do you feel is responsible?
- A. 7. The large number of backlogs existing in program after program when I arrived at EPA can only affirm that management was not a high priority with my predecessor. I am sure you have heard the expression "You can pay me now or pay me later." Well, the Agency is now having to pay "later" for the lack of attention paid to management by my predecessor.

Questions submitted by Senator Randolph

- Q. 8. On July 17, Deputy Administrator John Hernandez announced the intention for eliminating the mandatory requirement for value engineering reviews on all EPA grants for which the total cost of construction is more than \$10 million. This program was started in 1975 as a voluntary activity and was made mandatory two years later. In the past four years it has been estimated that value engineering reviews achieved a net savings of more than \$156 million or approximately 5 percent of construction costs.

In light of this record of savings, what is the justification for eliminating the mandatory value engineering review? What evidence do you have that substituting "guidance documents" will achieve comparable savings?

Until this year EPA was moving toward revising the regulations to require value engineering of all projects of more than \$5 million in total construction costs. Will you please explain the cost effective management rationale behind this reversal of position?

In his memorandum of July 17, Deputy Administrator Hernandez states that it is "in keeping with the President's policy to drastically reduce the burden of Federal regulation". In many instances this is an admirable goal. But in the present instance it is in obvious conflict with the President's goal to reduce waste. The EPA has made the judgment that the mandatory value engineering regulations are a "burden of Federal regulation. Would you please furnish this Committee with the number of the grantees who have objected to this burden and some documentary evidence of the nature of their complaints?

- A. 8. There was an earlier discussion within EPA on the merits of eliminating value engineering reviews for projects over \$10 million, since this was not a statutory requirement. After weighing the drawbacks and benefits, we have decided that the merits were great enough to retain the value engineering, and we have done so.

Questions submitted by Senator Randolph

Q. 9.(a) Canada provided information on March 6 about interim actions it was taking pursuant to the August, 1980, Memorandum of Intent between the Governments of the United States and Canada. Why has the Environmental Protection Agency not replied? What interim actions are being contemplated and when will they take effect?

A. 9.(a) The Canadian Embassy delivered an "Aide Memoire" to the State Department March 6, 1981 reporting on their regulatory "interim actions" under the Memorandum of Intent (MOI). "Aide Memoires" are diplomatic notes for information purposes and do not require responses. The U.S. will report on relevant regulatory actions at the appropriate time in our negotiations.

I would like to point out that "interim actions" as specified under the August 1980 MOI are not restricted to regulatory actions. Pending negotiation of a bilateral agreement, the U.S. has more than fulfilled its obligations on a range of MOI "interim actions" including continued high level of support for the MOI Work Groups, an increased acid rain research budget for fiscal year 1982, sharing of information on research and technology with Canada, consultations with Canada on policy and regulatory issues and, most importantly, continued enforcement of air quality standards and emission limits set under the Clean Air Act.

With regard to specific regulatory actions since the signing of the MOI, EPA has continued the level of effort on air pollution control exhibited in the past decade, which is far greater than that of Canada. For example, since August 1980, 14 additional new source performance standards have been proposed or made final; visibility regulations have been promulgated; and, for Nonattainment and Prevention of Significant Deterioration (PSD) areas, regulations have been promulgated to establish permit requirements for major new or modified stationary sources of air pollution.

Questions submitted by Senator Randolph

Q. 9.(b) Recently the Environmental Protection Agency has taken or has announced that it is contemplating actions which would increase air pollution that may affect other States and Canada. These include; (a) procedural requirements under Section 126 which are weighted heavily against the petitioners; (b) a decision refusing to tighten emission limits of two major sulfur dioxide sources on the shores of Lake Erie, allowing both substantially higher emissions than previous legal limits and the building of taller stacks; (c) the recent announcement that stack height regulations may be weakened to permit taller stacks and thereby promote the export of pollution. How can these actions be seen as consistent with commitments under the Memorandum of Intent? To what extent did the Environmental Protection Agency advise and consult with the Canadian Government, as called for in that document?

A. 9.(b) (a) The procedural requirements announced at a Section 126 June 1981 hearing are designed to improve the Agency's ability to evaluate petitions by reducing the complexities and uncertainties which have inhibited the implementation of Section 126. These procedures require three showings to be made as a part of any 126 petition. These showings are (1) a demonstration that achievement of the national standards or measures necessary to prevent significant deterioration or protect visibility is prevented by named out-of-State sources, and an indication that sources within the petitioning State, which affect the area subject to the petition, have adequate pollution controls. These showings do place a larger burden on the petitioning State than had existed in the past. However, the showings will clarify the issues and establish the technical bases of any petitioner's complaint, thus eliminating the potential for time-consuming, vague or empty allegations. This will make for an improved and accelerated decision-making process.

(b) In June 1980, EPA approved SIP relaxations at two coal-fired CEI plants - Avon and Eastlake. Two new stacks had been built at the plants and, consistent with EPA's proposed stack height regulation, the plants received credit for the new stack height up to GEP. EPA believes that current emission levels, although higher than before the SIP changes, protect the primary and secondary ambient air quality standards. The Agency is currently involved in litigation as a result of these actions.

Questions submitted by Senator Randolph

A. 9(b) (continued)

(c) The newest proposal would still reduce SO₂ emissions by 287,000 tons per year. The reason for the increased emissions is a change in the definition of when a plant came into existence which exempted additional sources from the proposed regulation.

The showings required under Section 126 are procedural and informational requirements involving interstate pollution abatement and resolution of petitions filed under that section. The CEI SIP revisions involved notice and comment rulemaking and the Canadians were free to comment. With respect to the stack height rules, the recent announcement concerned proposed regulations and established a comment period in which, again, the Canadians are free to submit comments.

Questions submitted by Senator Randolph

Q. 9.(c) There are indications the Environmental Protection Agency has refused to work with Canada in the technical groups established to prepare strategy packages and carry out other functions essential if the other work groups were to be able fully to carry out their responsibilities and if the negotiating team were to have the kind of agreed data base without which negotiations cannot advance. Such negotiations cannot be carried out in good faith if that kind of cooperative mechanism is not allowed to operate. How does the Environmental Protection Agency envision that progress will be made in negotiations when the work of this technical group is stalled and the work of the other groups substantially delayed, with the result that the negotiators do not have before them the documentation that both Governments previously agreed was essential?

A. 9.(c) When the MOI was signed in 1980 the bilateral Work Groups were set up to provide the negotiations with analytical summaries of what is known about the causes and effects of acid deposition and other transboundary air pollution issues. These analyses are continuing with full support of both Governments.

Originally the Work Groups were also directed to recommend control strategies for consideration of the negotiating teams. Both countries decided that these policy considerations were more properly the responsibility of the negotiators rather than the technical Work Groups. It was mutually decided, therefore, that policy analyses related to control options should be carried out unilaterally with each country responsible for deciding which national actions will be needed to limit pollution that crosses the border.

This change in Work Group assignments, which was agreed to by both the U.S. and Canada, in no way slows the cooperative scientific and engineering analysis which forms the basis of the negotiations. In fact we know of no indications that EPA has refused to work with Canada in the technical groups established to prepare strategy packages.

Questions submitted by Senator Randolph

- Q. 10. On November 22, 1978, the governments of the United States and Canada signed the Great Lakes Water Quality Agreement establishing measures to restore and maintain the waters of the Great Lakes Basin. Since that time considerable improvement has been achieved in the water quality of the lakes to the benefit of both countries. Continued effort is required, however, to meet the commitments of the agreement.

Please discuss in detail how budget reductions of the Environmental Protection Agency will effect the implementation of the Great Lakes Water Quality Agreement. In particular, how will the United States meet its commitments under the Agreement?

- A. 10. Currently, Congressional decisions covering various aspects, of USEPA's Great Lakes program have not been finalized so it is premature to accurately and precisely describe how U.S. commitments under the Great Lakes Water Quality Agreement will be met in FY 1982. It must be stressed that these program areas are subject to change based on final Congressional action on FY 1982 appropriations.

The Agreement also provides for both countries to do cooperative research on the Great Lakes although the Agreement is not specific as to research projects. While it was not originally planned to maintain a separate Great Lakes program in FY 1982, EPA did plan to conduct research at a number of other laboratory facilities on issues such as impacts of toxics on aquatic ecosystems, behavior of wastes in sediments, etc. In our view, the findings of our research, in addition to having national applicability, would also have been applicable to the Great Lakes. More recently, however, in response to a Congressional directive, we do plan to maintain a separate Great Lakes research program.

Questions submitted by Senator Burdick

- Q. 1. As yet, no nominees for the Assistant Administrator positions for the Offices of Water; Solid Waste and Emergency Response; and Research and Development have been submitted for Senate consideration. Can you tell us when these nominations might be forthcoming?
- A. 1. These positions are Presidential nominations, and filled by the President through a complicated and lengthy process involving a full field investigation by the F.B.I. and clearance from the I.R.S., as well as compliance with the requirements of the Ethics in Government Act. Like you, I would like to have such first line managers in place as soon as possible, but the procedure takes time. I took forward to the time when these nominations are submitted to the Committee.

Questions submitted by Senator Burdick

Q. 2. In your prepared statement you outline a "new accountability system" to which the performance of Assistant Administrators, Regional Administrators and key managers will be subject. Can you briefly describe how the mechanics of this system will work, and how it will be audited?

A. 2. The following responds to the questions concerning the new accountability system that the Administrator is establishing. As you know, the main purpose is to ensure that the Assistant Administrators, Regional Administrator, and key managers meet their commitments to fulfill the Administrator's overall goals and objectives for EPA. Below is a brief description of how the system will work and how it will be audited. If you or your staff would like more details, we would be glad to provide them.

A. Description of the New System.

The principal purpose of the new accountability system is to define EPA's major goals and objectives for the coming fiscal year and to ensure that these goals are met. For fiscal year 1982, the Administrator has defined six major goals. (See attached). Within this framework, each of the key managers has defined major program objectives and sub-objectives related to fulfilling these goals.

The initial system is designed to be selective. Within the framework of the Administrator's overall goals, the system will include only those activities of greatest importance or interest to the Administrator. For example, while delegation of authority to States is a key goal, the Administrator's system will track progress on delegating only the major programs such as those under the Resource Conservation and Recovery Act. The program managers are expected to develop their own tracking systems for other programs within their jurisdictions. From EPA's past experience, too many items can easily dilute the system and divert attention from the most significant ones.

The first quarter of this fiscal year will be devoted to designing and initiating the system Agencywide. On October 13 and 14, the Administrator convened a meeting of the Associate, Assistant, and Regional Administrators to discuss the Agency's goals and objectives for the coming fiscal year and specific commitments in the draft accountability system. We are continuing to refine these. In November, the basic framework will be established including commitments to develop specific

Senator Burdick - Question 2 (continued - p. 2)

program measures to be tracked over the fiscal year. First quarter reporting will be on a "trial basis," with the system operated in force during the subsequent quarters.

The new accountability system is for those managers who report directly to the Administrator. The primary focus is on the key managers in Headquarters (i.e., Assistant Administrators) and the Regional Administrators who have the primary responsibility for implementing EPA's programs.

As mentioned above, program managers will be expected to develop more comprehensive systems to hold their subordinates accountable. These complementary management systems will track a broader spectrum of activities many of which will not be specifically included in the Administrator's accountability system. The new Management Systems Division will provide advice and support to managers for establishing an effective tracking system.

B. Enforcing Commitments..

In addition to requiring managers to submit written reports on a quarterly or more frequent basis as necessary, the reporting system will be supplemented by review sessions with the Administrator and Deputy Administrator as well as in-depth analyses of selected programs.

The Administrator is deeply committed to making this system work. Through telephone calls, memoranda, and special meetings, the Administrator intends personally to enforce the commitments of her managers. The strong commitment of both the Administrator and Deputy Administrator to enforcing commitments will significantly enhance the effectiveness of the system.

Another essential means of ensuring that the new accountability system is effective is the quality assurance function. The Administrator has established a new Division to manage the new accountability system and related activities. This Management Systems Division will play an active role in assuring that program managers are effectively meeting their commitments on a continuing basis throughout the year, not just on a quarterly basis.

Senator Burdick - Question 2 (continued - p. 3)

A key feature of the quality assurance function is in-depth reviews of selected programs. Orchestrating teams of experts from relevant program offices and outside consultants as necessary, the Management Systems Division will be responsible for thoroughly reviewing program performance to diagnoses why a program is failing to meet its objectives.

While the audits will be short-term, the resulting diagnoses may recommend further evaluation of a particular program's planning, financial management, organization structure, decision-making or other processes. Subsequent analyses would be conducted by other EPA offices or by consultants as appropriate. These reviews will be an important means to ensure that programs are being effectively managed and that the Administrator's goals and objectives for the Agency will be met.

ADMINISTRATOR'S MANAGEMENT GOALS FOR FY 1982

I. Delegation to States

EPA must expedite delegation to States by reviewing requirements for assuming and maintaining delegation, and by assessing and resolving obstacles with individual States. In addition, we must provide adequate technical and other assistance necessary to ensure high quality State programs that meet EPA and legislative objectives.

II. Improving the Quality of EPA Science

A primary goal of the new Administration is to improve the quality of the scientific and technical support that underlies EPA's policy decisions and regulatory and enforcement actions.

III. Controlling Threats from Hazardous Waste

One of EPA's highest priorities for FY 1982 is to implement Superfund, Resource Conservation and Recovery Act (RCRA), and other EPA authorities to ensure that past and present hazardous waste sites do not contaminate underground water supplies or otherwise threaten valuable environmental resources.

IV. Review of Regulations

EPA must critically review both new and existing regulations to ensure compliance with the policies of the new Administration. The Administrator will track on a monthly basis the commitments made for regulatory review to the Vice President's Task Force on Regulatory Review. In addition, she will select other regulatory actions for special attention.

V. Reducing Backlogs and Meeting Commitments

EPA must make substantial progress in FY 1982 to reduce the backlog of unmet statutory and other important commitments and ensure that it fulfills current obligations in a timely manner.

VI. Improving Agency Management

Especially with existing budget constraints, EPA needs to review existing management systems and support functions and develop more efficient ways of performing and providing services.

Questions submitted by Senator Baucus.

- Q. 1. You stated in testimony presented to this Committee for your nomination hearing that you recognized three responsibilities to be of "paramount importance". One of these was, "... faithful implementation of the intent of Congress as expressed in our environmental protection statutes". How do you propose to honor this responsibility with fewer personnel and resources while the Agency workload is expanding as the result of these statutes?
- A. 1. I believe that EPA's first responsibility is to implement those actions which Congress has mandated. That requires that resources first be directed to those mandates before unmandated activities are addressed. I am confident that the management changes I have initiated will result in significant savings in both workyears and budget dollars which can be focused on the Congressionally-mandated activities and allow us to honor our responsibilities.

Questions submitted by Senator Baucus

- Q. 2. In testimony you presented before this Committee during your nomination hearing you stated, "We should seek and accept input from all points of view, evaluate alternatives in light of best possible information . . ."

According to information reported by the New York Times and the Washington Post, two incidences have occurred that appear to run counter to the intent expressed in your testimony. The first involved discussions between the Agency and industry representatives concerning settlement of a suit involving consolidated permit regulations, which excluded both EPA and Justice Department attorneys of record. The second involves discussions with industry groups and the Agency concerning regulations of two chemicals suspected of having carcinogenic effects, formaldehyde and DEHP in which other concerned parties were excluded. Would you please comment on why the Agency chose to conduct these meetings in this manner?

- A. 2. The two meetings to which you refer raise different legal and policy issues. The meeting on consolidated permits took place as part of negotiations to settle a lawsuit; the meetings on DEHP and formaldehyde were held to discuss the scientific basis of studies and research on these two chemicals.

Mr. Frank Shepherd, then the Chief legal officer of the Agency, concluded, as part of our settlement strategy in the consolidated permits litigation, that he would get a more precise understanding of the views of each of the major parties if he met with them separately. He offered such a meeting to the Environmental Defense Fund as well as to the major industry plaintiffs. However, EDF chose not to accept this offer.

All the meetings were attended by Mr. Shepherd. Accordingly, the meetings did not raise any question involving discussions between a party represented by counsel and one who is not. Mr. Shepherd obtained two separate oral opinions from his staff as to the propriety of these meetings before conducting them. In each case, his staff advised him that the meetings would be proper.

(The balance of the response to this question was supplied directly by Dr. Hernandez)

With respect to the meeting held on formaldehyde and DEHP, I first want to assure you that these sessions were of great value in exploring the scientific basis of studies and research on these two chemicals. The mechanism used was timely, appropriate, consistent with the law, and effective. I believe that some of the best possible sources of information on the toxicity of these two chemicals was available in the form of participation by representatives from CIIT, NAS, NCTR, NCI, and OPTS at these meetings.

Questions submitted by Senator Baucus

A. 2. (continued)

Agency policy on these two chemicals is still in the formulative stage and in the future. Federal Register Notices will be published that deal with the Agency's positions and points of view. In addition, I plan to ask the Science Advisory Board to consider the scientific and technical issues associated with formaldehyde as more information becomes available from ongoing research.

Now let me tell you in detail what took place and why.

Beginning with formaldehyde, EPA interest in the subject was triggered by the October 1979 preliminary report of the Chemical Industry Institute of Toxicology (CIIT) which suggested that interim results of formaldehyde inhalation tests involving rats indicated that the substance may induce cancer in these animals at high concentrations of exposure. Over the next year, EPA and other federal agencies began to look into the matter of formaldehyde. Despite the concerns raised by the CIIT study, numerous questions remained, and consequently, there was no rush toward regulation. Indeed, fifteen months elapsed from the time the issue was first brought to the attention of former EPA Administrator Costle to the time when the Carter Administration left office. During that entire time, the Agency took no efforts to regulate formaldehyde, nor did it deem the chemical as one to be given priority consideration for regulatory action under the Toxic Substances Control Act.

It was not until May 20, 1981, the very day Administrator Gorsuch and I took office, that EPA staff recommended that action be taken on formaldehyde under TSCA. In a May 20th memo, the Acting Assistant Administrator for our Office of Pesticides and Toxic Substances urged that the Administrator designate formaldehyde a priority substance under Section 4(f) of TSCA. The memorandum only called for priority consideration; it did not reach any ultimate conclusion on the safety of formaldehyde nor did it recommend any actual regulatory action. To have made a snap decision on this critical issue during our very first days in office would, I believe have been the height of irresponsibility.

Questions submitted by Senator Rausch

A. 2. (continued)

During this initial period, I received letters and technical reports from the Formaldehyde Institute. I sent them a copy of the EPA staff package on formaldehyde at their request. On May 27th, again at their request, I met with seven of their representatives in my office. Their scientists told me of a number of technical weaknesses in the staff document.

I then initiated a review of all the data available on formaldehyde with the intent of providing the Administrator with a recommendation on the scientific and technical issues, so that she could make a policy decision as soon as was practicable. Preliminary investigation led me to report on June 9th of this year that the ambiguities and weakness of the information available to me made it impossible to render an affirmative or negative finding as to whether or not exposure to formaldehyde may or will present a significant risk of serious or widespread harm to humans. I recommended that EPA staff be instructed to conduct additional studies, and, at the same time, I resolved to continue to make all possible efforts to learn everything I could about the scientific issues involved.

Since the review process I conducted on formaldehyde was essentially the same one I used on the question of DEHP, I'm going to pause here to discuss the background of DEHP - as I have just done for formaldehyde - before resuming the discussion of the review process I employed in the cases of both chemicals.

DEHP first came to the attention of the Agency in March 1980, more than 14 months before Mrs. Gorsuch and I took office. At that time, EPA was made aware of preliminary reports on a study done by the National Cancer Institute. This study, a 2 year animal bioassay indicated that exposure to DEHP correlated with the incidence of certain tumors in rats and mice. Nine months later, in December 1980 - after EPA had conducted certain "in-house" research of its own on the chemical - the Deputy Assistant Administrator for Toxic Substances indicated in a memo that "the data available on DEHP exposure potential and carcinogenicity are probably (my emphasis) sufficient to require decision-making by EPA according to the schedule required by TSCA section 4(f)." Nevertheless, as in the case of formaldehyde, the Administration left office without having declared DEHP a 4(f) chemical under TSCA. The decision package that course did not come to the Acting Administrator until April 1981.

When Mrs. Gorsuch and I took office a month later, we were once again being asked to make a snap decision. Such a decision, we felt, was no more appropriate or responsible

Questions submitted by Senator Baucus

A. 2: (continued)

here than in the case of formaldehyde. Like formaldehyde, Mrs. Gorsuch asked me to undertake a comprehensive review to ascertain the scientific facts - insofar as they could be known - concerning the potential DEHP has for causing cancer in humans. Only with such analysis could the Administrator responsibly decide whether either of these two chemicals merited treatment under section 4(f) of TSCA.

Part of my review of the subject involved my attending a series of meetings on formaldehyde and DEHP. These meetings - three on formaldehyde and three on DEHP - took place at EPA and involved scientists from industry as well as from the Agency; scientists not from EPA or industry also participated. While a small handful of the attendees were not scientists - Agency and industry lawyers come to mind - the discussion dealt exclusively with scientific matters.

The meetings grew out of requests, made orally and in writing, by representatives of the Formaldehyde Institute and the Chemical Manufacturers Association (CMA), asking for an opportunity to meet with me to discuss the scientific issues pertaining to formaldehyde and DEHP, respectively. The purpose of those wanting to see me was to present scientific evidence which would, they claimed, make it clear that formaldehyde and DEHP do not involve the dangers envisioned by Section 4(f) of TSCA.

Since I had been charged by the Administrator with reviewing all the credible scientific information concerning possible "4(f) toxicity" of these chemicals, I was, of course, interested in hearing what evidence these industry scientists had to offer in the presence of EPA staff scientists from whom I also wanted to hear. The free give-and-take on scientific issues, I felt, would be of the greatest benefit to all concerned in determining the technical facts. It would also tend to keep all the participants intellectually honest. I, therefore, explained to the Formaldehyde Institute and the CMA that while I would be glad to listen to their scientists, it would not be one-on-one; it would be in the presence of other scientists knowledgeable on the issues.

Questions submitted by Senator Baucus

A. 2. (continued)

The first such meeting was on formaldehyde. It was left to the Formaldehyde Institute to decide whom they wanted to bring. I asked the Acting Assistant Administrator for Pesticides and Toxic Substances to decide which Agency personnel - as well as outside scientists - should be invited. The only injunction I laid down to those doing the inviting was that participants in the discussion were to be those who could shed some light on the scientific issues. The meetings were to be exclusively scientific in nature. I made it clear that "policy recommendations" or "legal interpretation" were not part of the agenda for discussion. Those were matters for the Administrator.

At the outset of the first meeting, I also made it clear that I did not view the gathering as a "science court". There was not going to be any cross-examination or other "procedural rules". While participants could take whatever notes they wanted, neither I nor my staff would be keeping official "minutes". What I wanted, I told those in attendance was an honest, free-wheeling exchange of scientific information. I also told them that while I did not know how long it would take to thoroughly air the relevant scientific issues, I wanted to get all the facts - whether that meant one meeting, two meetings or several meetings. It turned out that three meetings were necessary to cover the topics I wanted discussed.

The first of these "formaldehyde sessions" took place on June 19, 1981 at EPA headquarters, and lasted about 2 hours. The subjects discussed that day were available animal data, the mechanism of formaldehyde carcinogenicity, and human epidemiology available on formaldehyde. In addition to EPA and Formaldehyde Institute participants, the meeting also included scientists from the Oak Ridge National Laboratory, the National Academy of Sciences and the Chemical Industry Institute of Toxicology.

The second formaldehyde session took place on July 20, 1981, on which occasion the topics discussed were human epidemiology and human exposure. Like all the meetings on formaldehyde and DEHP, it was held at EPA headquarters, and lasted 2 to 3 hours. The third meeting on formaldehyde occurred on August 14, 1981, at which time discussion focussed on the principles of risk assessment which EPA used to determine formaldehyde's carcinogenicity and ongoing epidemiological studies. Each of the meetings were attended by scientific experts from EPA, the Formaldehyde Institute, and various research facilities. The EPA participants, the Formaldehyde Institute participants and the "outside" participants varied from meeting to meeting.

Questions submitted by Senator Baucus

A. 2. (continued)

While some participants attended each of the three meetings, others participated only in the meeting or meetings that pertained to their area of scientific expertise. Attendance was at the discretion of the individual participants. If they wanted to attend all the sessions, that was fine; if they wanted to attend only a meeting in their area of specialty, that was all right also. The only rule was that discussion be knowledgeable and focus on the scientific issue or issues at hand. All of the foregoing statements I've made about the arrangement and procedure of the formaldehyde meetings applied to the DEHP meetings as well. These were held at EPA on August 20, September 1 and September 29 of this year, and likewise were about 2 to 3 hours in length.

The subjects discussed were available animal data, testing of DEHP (both planned and underway), human exposure, and the risk assessment prepared by the Agency. EPA participation at the meetings was handled in the same way as it had been with the formaldehyde sessions; CMA participation was subject to the same rules I gave the Formaldehyde Institute in those meetings: they brought whom they wanted subject to the requirement that they bring people who could speak knowledgeably about the scientific issues; "outside" scientists such as representatives from the Midwest Research Institute, the National Toxicology Program/National Cancer Institute and the White House Office of Science and Technology Policy - were invited by EPA staff. I personally never knew from meeting to meeting who would be there.

After I had been through a few of the meetings, a member of my staff asked me how I would respond if people not specifically invited should seek to attend any of the sessions. His question was motivated by the fact that word travels fast in this town, and as word of the meetings spread, he felt it was inevitable that others would ask to attend. The "rule" I gave him was the same one I gave to the participants at the meetings: I wanted to hear from anyone who could give me credible scientific information on the subject at issue. The whole idea of these meetings was to educate us on the science, and anyone who could contribute to that process - regardless of their ultimate feelings on whether formaldehyde or DEHP should or should not be regulated - was welcome. Unwelcome would be those who wanted to urge policy as opposed to providing scientific information, those who wanted to merely observe, and those who wanted information themselves - who wanted to ask me questions. The purpose of the meetings was to get all the scientific information pertaining to the exposure and toxicity of these substances out in the open.

Questions submitted by Senator Baucus

A. 2. (continued)

Now that they are over, I feel that these meetings have been very useful. Mutual scientific understanding of the mechanism of these two substances has been enhanced. I feel my knowledge on the subject is greater than it would have been if I had met with just Agency scientists or just industry scientists. By getting many knowledgeable people in the same room and by thoroughly scrutinizing the available data, I believe scientific accuracy has had its best chance to emerge.

Questions submitted by Senator Baucus

- Q. 3. According to a GAO report released last month, insufficient staffing and resources are hindering implementation of the Resource Conservation and Recovery Act interim status program. How do you propose to adequately staff and fund this initiative?
- A. 3. Despite the cutbacks necessary within EPA to trim the Federal budget, the hazardous waste program under RCRA is, with the Superfund program, my highest priority area. We are committed to a strong RCRA program, and we believe we have allocated, and will continue to allocate, sufficient resources to meet our RCRA hazardous waste objectives. Our FY 1982 budget includes 173.3 FTE and \$19,986,400 for implementation activities. We believe that effective utilization of these resources have and will permit an effective interim status program.

Questions submitted by Senator Baucus

Q. 4. Last year, the Agency formulated and received comments on a national ground water protection strategy. Does the agency intend to pursue this strategy? If not, what other approaches might be used to encourage ground water protection?

A. 4. While the Agency does not intend to pursue further the Ground Water Protection Strategy which was formulated by the last Administration, we do intend to give the highest priority to the protection of underground waters and to formulate a coordinated approach to the implementation of programs which affect ground water.

The following highlights the high priority we are currently giving ground water programs:

- o Since August 1979 EPA has filed 60 actions of which 60% are for the protection and enhancement of the Nation's ground water. We have obtained settlements or judicial decisions in 20 of these cases.
- o The newly created Office of Solid Waste and Emergency Response will give new stature and focus to programs which protect or restore the environment, including ground water, from contamination by hazardous substances.
- o One of these programs, Superfund, authorized by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, announced plans in February to fund feasibility studies and preparation of engineering designs for cleanup of 17 hazardous waste sites. Three more sites were added subsequently. The Superfund program provides for planning to investigate ground water contamination and for developing solutions for removal of containers, contaminated soil, ground water cleanup and final site closure.
- o We are also proceeding with the implementation and enforcement of the hazardous waste regulations that we have promulgated to date under the Resource Conservation and Recovery Act (RCRA). These regulations provide for proper management of hazardous waste to put an end to the indiscriminate dumping and other inadequate handling of these wastes which have led to contamination of ground water resources.

Senator Baucus - Question 4 (continued p. 2)

- o We are proceeding with the development of our regulations which establish technical standards for issuing RCRA permits to land disposal facilities. Although we have considerable work to accomplish before issuing these regulations, we believe we will be able to draft tough, protective, but economically effective standards that can be used to provide the necessary protection of valuable ground water resources.
- o We are also moving vigorously to implement the Underground Injection Control (UIC) Program which is designed to protect underground sources of drinking water from contamination. We are now receiving and reviewing applications from States seeking primacy authority to administer that program.
- o We have supported the doubling of resources for ground water and subsurface research, from \$3,818,000 in FY 81 to \$7,994,700 in FY 82. The programs supporting this research are developing a coordinated plan to assure that these funds target the most significant regulatory needs with no overlap or duplication.

With respect to achieving a coordinated ground water effort within EPA, we are forming a Task Group to review the issues raised in the area of ground water policy. This group will make recommendations on further steps this Agency should take with respect to ground water protection. The group will develop options for a ground water policy and identify the changes that may need to be made in EPA's programs to coordinate our ground water approach.

Questions submitted by Senator Baucus

- Q. 5. Would you address allegations in a Washington, Post Article of Sept. 30, that suggest that the Associate Administrator of the Office of Policy and Resource Management, Nolan Clark's resignation was predicated by an effort to remove senior staff who questioned the Agency's ability to meet legal requirements under proposed budget cuts?

Would you comment on reports that Mr. Clark was in fact asked to leave the Agency? Could you expand on what Mr. Clark cited as "irreconcilable differences of style" with your methods of conducting the Agency?

- A. 5. Mr. Clark submitted his resignation at my request to return to the private sector from which he came. Mr. Clark was, and still is, committed to implementing the President's program; however, he has chosen to pursue that in another capacity. While Mr. Clark was at the Agency, he was responsible for, among other things, preparation of budget recommendations for my consideration. I found Mr. Clark's budget recommendations to be based on a realistic expectation of what the Agency can achieve under better and more efficient management. And, with few and minor exceptions, Mr. Clark's recommendations were accepted by me. Only Mr. Clark could advise you of what he considers to be "irreconcilable differences of style".

Question submitted by Senator Baucus

- Q. 6. The peer review process for EPA scientific work to which you refer in your statement, has been the subject of a recent article in Science Magazine. Can you respond to the allegations that this system really constitutes an administrative review rather than peer review?
- A. 6. I am attaching a copy of the current version (a final draft is still in process) of our proposed process for peer review. The procedures define that Agency publications requiring peer review, where peer review starts and ends, and which publications must be sent to the Science Advisor for his consideration. The process limits these publications to "major documents", defined in terms of any material with policy implications or which may contain scientific or technical uncertainties, or in terms of minimum printing costs beginning at \$10,000. In general, the procedure employed is that used by other Federal agencies that have good peer review systems. EPA does not have an Agency-wide system and most programs have none at all. Every organization of any scientific merit has a strong mandatory peer review system -- it is a must if we are to have any scientific credibility in what we say. Finally, with respect to aspects of administrative review incorporated into the system, it is fundamentally sound to have a mechanism for consideration of consistency, coordination, and planning of any policy statements that are incorporated into EPA publications. I am sure that you will agree that adoption of policy is the responsibility of the Administrator.

Peer review as outlined in the attached document is scientifically sound, ethical, proper, and needed. It is also a good idea from an administrative perspective. This document merits reading.

ENVIRONMENTAL
PROTECTION
AGENCY

ORDER

2200.

PUBLICATIONS AND COMMUNICATIONS MATERIALS - GENERAL

PEER REVIEW PROCESS FOR SCIENTIFIC AND INFORMATIONAL DOCUMENTS

1. PURPOSE.

a. This Order establishes Agency policy on reviewing scientific and informational materials. The purpose of this review process is to protect and ensure the technical and scientific quality of these types of public materials distributed by the Environmental Protection Agency. This Order establishes a peer review process to ensure that such materials are based on the best scientific and technical evidence available.

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Dist: Directives Distribution

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(2) A reviewer should use marginal notes or interlineations on the draft publication to indicate suggested changes or questions. Where

suggestions are numerous or complex, or where more serious questions arise, an attached memorandum is appropriate. Marked-up drafts, and accompanying statements from reviewers, are returned directly to the author unless other directions are provided.

(3) Reviews should be completed in a reasonably prompt fashion. Peer-reviewers and those in the administrative chain should make every attempt to meet the proposed time schedule. Review from the office director level up through the Associate, Assistant or Regional Administrator or Office Director within the Office of the Administrator level should be completed within two weeks.

c. Redrafting.

(1) The author should make efforts to give thoughtful consideration to and to accommodate the comments provided by reviewers in modifying and redrafting of the text. In preparing a revised draft, acceptable changes and corrections should be incorporated. If only relatively minor differences of opinions on scientific or technical issues exist between the author and reviewers, the author should briefly explain his positions on the revised draft when it is sent out for re-review. The author should also indicate changes that may or may not have been made so as to alert the reviewers of a revised draft.

(2) Where substantial differences or misunderstandings occur, the author should explain his/her views in more formal comments in a memorandum attached to the revised draft of the manuscript. Informal consultation and discussion between reviewers and author are highly desirable in order to clarify points of view and to facilitate agreement when significant differences arise.

(3) The review process is repeated until the author feels that the proposed publication is ready for submission for internal administrative and final technical review. At this point, statements of concurrence and the signature of the designated peer reviewers should be attached to the text. In cases where the author has not reached a consensus with the reviewers, comments on the nature of their differences, prepared by the reviewers, should be attached to the text and transmitted to the next administrative level for review and approval.

d. Administrative and Final Technical Review.

(1) The prepared publication should then be submitted to the office director level for review. This office is expected to provide final approval for technical and scientific soundness and overall organization and presentation of data. Refusal at any level of management to approve a document may be appealed once to the next higher level of management.

(2) At this level, or if appropriate at a lower level, a memorandum outlining any expenditures, and sources of funds or priorities, or unusual conditions should be attached. This memo should also include plans for publication, dates, and the anticipated number of copies, as well as the purpose of the publication, the intended audience, a full description of the proposed format (i.e., size, number of pages, design and color) and/or a mockup of the finished product.

(3) The publication and accompanying memorandum then move to the Associate, Assistant or Regional Administrator or the appropriate Staff Office Director in the Office of the Administrator who has final authority on deciding whether the document is a "major" document which then must be reviewed by the Science Advisor and the Office of Public Affairs. A "major" document is:

- any material of any cost that has policy implications or contains scientific or technical uncertainties. The Associate, Assistant, or Regional Administrator, or Staff Office Director within the Office of the Administrator in whose program, region, or office the document originates, is responsible for determining if a report has policy implications;
- any product from a project funded at \$50,000 or more;
- any single product that costs \$10,000 or more to print;
- any category or series of reports that costs \$25,000 or more a year to print; or,
- any periodical as defined by GMB Circular A-3.

All minor documents should be carefully examined before publication. The Associate, Assistant, or Regional Administrator or Staff Office Director in the Office of the Administrator is responsible for these minor documents as to their technical and scientific credence and quality.

(4) Major documents will be copied and submitted to the Science Advisor and to the Office of Public Affairs. These individuals, or their designated representatives, will review the manuscript on behalf of the Administrator. The Science Advisor or Director of OPA may send manuscripts related to policy issues to other senior officials in the Agency for additional internal review. Those manuscripts of a complex technical nature may be sent to selected experts outside the Agency for confidential review. Certain types of documents may not require full review by both the Science Advisor and OPA because no issues related to their respective review arise; in these cases, either the Science Advisor or OPA will quickly review and approve the document.

(5) The Science Advisor, or his designate, will review documents for general scientific and technical content, clarity, logic, consistency, soundness of conclusions, organization and scope, presentation and quality of data, validity of analytical techniques and overall conformity with research, policy, and publication aims of the Agency. The Science Advisor will develop systems for review, for report of comments to the author, and for notifying program areas of the final decision regarding the publication.

(6) The Office of Public Affairs will review both technical and non-technical information materials for conformity with EPA's Public Information Policy and Graphics Standards System. The Office of Public Affairs will oversee the entire publication and printing system for major documents of the Agency to ensure consistency and to avoid duplication. The Office of Public Affairs will also be responsible for determining the mechanical matters of distribution, manner of printed presentation, conformity to budget requirements, and overall consistency with Agency goals.

(7) Papers prepared for publication for outside journals are returned to the author after approval by the Science Advisor. Each administrative office that participated in the review process will be notified of this action. The author is responsible for mailing the text to the outside journal and for supplying appropriate offices in the Agency with depository copies. At this point the author is also free to release the paper to the general public if so desired.

(8) The final manuscript must be approved by both the Science Advisor and the Director, OPA. Following such approval, the manuscript is returned to the author, and each administrative office that participated in the peer review will be notified of this action.

(9) In the event of an unfavorable review by OPA and/or the Science Advisor, the manuscript is returned to the originating office or the author as is appropriate. All comments should be addressed and necessary revisions made.

e. Products of External Contracts and Grants.

(1) Informational materials, reports, and other products produced under an EPA contract, grant, or cooperative agreement must go through a comparable system of review prior to their release to the public as an EPA publication or product. The Project Officer is responsible for insuring that adequate internal EPA review consistent with the rights and data clauses of EPA contracts, grants or cooperative agreements is conducted, including approvals by appropriate Associate, Assistant, or Regional Administrators or Office Directors within the Office of the Administrator, and the Science Advisor and Office of Public Affairs. Grant officers developing grants which involve public information/public participation activities should encourage the use of cooperative agreement grants which enable EPA to require the grantees to submit their material for review and/or approval prior to its completion and distribution.

(2) On the other hand, EPA encourages the independent publication of the results of its contract and grant research in appropriate professional journals. When an author receiving a contract or grant from EPA sends out a paper for publication, a courtesy copy should also be sent to the EPA Project Officer who will forward it to the appropriate Office Director, Associate, Assistant, or Regional Administrator, and the Science Advisor. Following publication, copies of the journal paper must be submitted to the Science Advisor and to other addressees in quantities as may be directed by the Project Officer. Provisions to ensure EPA receipt of journal papers by contractors or grantees must be included in research agreements.

Anne M. Gorsuch
Administrator

Questions submitted by Senator Baucus

- Q. 7. It has been reported that as part of budget reductions to the Research and Development program, laboratories in Cincinnati and Triangle Park, North Carolina will be closed. Would you please comment?
- A. 7. Fiscal year 1982 budget reductions required the Office of Research and Development (ORD) to abolish its Health Effects Research Laboratory in Cincinnati; to establish, in Cincinnati, a 70-person Toxicology and Microbiology Division that reports to the Health Effects Research Laboratory at Research Triangle Park, NC; and to close the Newtown (Ohio) Fish Toxicology Station.

The elimination of the air inhalation toxicology studies on diesel emissions and of the chronic disease epidemiologic research necessitated a reduction in the size of ORD's health effects research effort in Cincinnati from an 108-person laboratory to a 70-person division.

The Newtown Fish Toxicology Station's functions will be accomplished by a small staff (reduced by 4 positions) completing the Complex Mixtures Research Program at another ORD site in Cincinnati and by the consolidation of its environmental effects research at its parent laboratory, the Environmental Research Laboratory in Duluth, MN.

No laboratory closings in Research Triangle Park, NC, resulted from the 1982 budget reductions. However, the Health Effects Research Laboratory in RTP is now undergoing a reorganization to accommodate reductions in the health effects research program.

Questions submitted by Senator Sarbanes

- Q. 1. Is the Agency planning to close the Beltsville Biological and/or Chemical Laboratories within the Office of Pesticide Programs?
- A. 1. Consistent with the President's programs and policies, the Environmental Protection Agency (EPA) is seeking ways to improve efficiencies and eliminate duplication wherever possible. Biological testing of pesticides by Agency personnel is one area where such efficiencies can be realized without loss of data. While this particular testing activity will be phased out, the Beltsville facility itself will not be closed.

Questions submitted by Senator Sarbanes

Q. 2.(a) What cost savings are anticipated from closing the laboratories?

A. 2.(a) 1. FY-81 costs of operating the biological laboratories were \$600K.

2. Those costs were distributed between salaries/expenses. Salaries were approximately \$546K and expenses \$54K.

3. Savings could be recognized in FY-82 by closing the biological laboratories. The date those laboratories are closed would determine the magnitude of the savings. If that laboratory were closed on January 1, 1982, it would be possible to save approximately \$469.6K.

4. Those salaries/expenses were determined as follows:

A. Salaries adjusted for 4.8% increase (\$546K X 0.048 = \$26.2)	\$572.2K
(\$546.0K + 26.2K = \$572.2K)	

B. Operating Expenses (other than salaries)	54.0K
(No increase from FY-81)	

\$626.2K

5. Savings would be determined by deducting costs of operations between October 1, 1981 - January 1, 1982 from the total (\$626.2K). If we assume salary/expenses are linear for the entire year, then approximately 25% of the total would be expended in this period.

Therefore, the savings would be $\$626.2K \times 0.75 = \$469.6K$

Q. 2.(b) Over what period of time will the estimated savings be realized?

A. 2.(b) Those savings (469.6K) will be realized for the balance of FY-82.

Questions submitted by Senator Sarbanes

- Q. 3. Without in-house laboratories, how does the Agency plan to gather the data necessary to assess the safety and efficacy of pesticides, herbicides, rodenticides and disinfectants? Are the testing activities to be carried on by other laboratories, or eliminated entirely?
- A. 3. The Agency is committed to finding efficiencies in implementing our Congressional mandates, and I believe that biological testing can be carried out by testing facilities other than those maintained by the Government. The pesticide law, as you know, puts a burden on industry to ensure that their products are efficacious, and we believe that this responsibility, coupled with activities of entities such as independent laboratories, hospitals, or other medical testing facilities, will continue to protect public health from products which do not perform as claimed.

Questions submitted by Senator Sarbanes

- Q. 4. If some or all of the testing is to be contracted to private labs, what assurances are there that those labs can be relied upon to conduct unbiased testing and evaluation? Is there not a danger that private labs, who depend on manufacturers for much of their business, will be tempted to produce results acceptable to those manufacturers? Is it prudent to rely on possibly biased information to make decisions affecting public safety?
- A. 4. As we explore alternative procedures for assuring the performance of public health pesticides, we have and will continue to work with other Federal and State agencies and with public health organizations that have similar interests regarding efficacy in order to assure product performance. However, it should also be noted that FIFRA places the burden for testing all pesticides products on the regulated industry, and the preponderance of data is now generated by industry, or industry-paid laboratories. That data is reviewed by the Agency as part of the overall regulatory process, but for the most part relatively little new data is generated by the Agency. Additionally, EPA in cooperation with FDA maintains a laboratory audit program to evaluate the performance of laboratories that contribute to the FIFRA regulatory process.

Natural Resources Defense Council, Inc.

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STATEMENT ON THE DISMANTLING OF EPA
SUBMITTED TO
THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
OF THE UNITED STATES SENATE
BY
JONATHAN LASH, STAFF ATTORNEY, NRDC

October 15, 1981

The Environmental Protection Agency (EPA) administers 16 federal laws that protect Americans from pollutants in the air we breathe, the water we drink, the food we eat, and the land we live on. Together these statutes are the backbone of environmental, safety, and health protection in the United States. Now, however, under the rubric of budget cuts and regulatory reform, the EPA is, quite literally, being dismantled. Career professionals are being driven from the Agency. Enforcement actions have all but ceased. Health and safety research has been decimated. Major regulations have been suspended, modified, or are slated to be changed. Decisions are made after closed-door sessions with industry and without the opportunity for public participation. The danger is not simply that environmental progress will be slowed, but that the entire legal and institutional framework for environmental

protection will be destroyed, and human beings will suffer death and disease as a result.

EPA - Founded in Necessity

The EPA was created by President Nixon in 1970 in the aftermath of Earth Day. He stated in his reorganization message creating EPA that only by governmental action "can we effectively ensure the protection, development and enhancement of the total environment. . . ." In creating a single federal agency, he recognized that "for pollution control purposes the environment must be perceived as a single interrelated system"

Soon after EPA was established, its responsibilities began to increase. Strong clean air legislation was passed within months; clean water legislation a year later. These statutes required EPA to undertake regulatory programs unprecedented in breadth and significance, establishing and enforcing pollution control standards for thousands of sources. At the same time, EPA was required to oversee the development of state programs to comply with portions of these acts.

By the mid-1970s the Nation had begun to recognize another hazard - toxic pollutants. While conventional pollutants were beginning to be subject to regulation, discharges of other substances, cadmium, lead, mercury, arsenic, polychlorinated biphenyls, hydrocarbons, and hundreds of others, were not controlled. The quantities of these substances discharged were less than of the conventional pollutants, but it began to be apparent that their potential effects on human health were

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(3) Reviews should be completed in a reasonably prompt fashion. Peer-reviewers and those in the administrative chain should make every attempt to meet the proposed time schedule. Review from the office director level up through the Associate, Assistant or Regional Administrator or Office Director within the Office of the Administrator level should be completed within two weeks.

c. Redrafting.

(1) The author should make efforts to give thoughtful consideration to and to accommodate the comments provided by reviewers in modifying and redrafting of the text. In preparing a revised draft, acceptable changes and corrections should be incorporated. If only relatively minor differences of opinions on scientific or technical issues exist between the author and reviewers, the author should briefly explain his positions on the revised draft when it is sent out for re-review. The author should also indicate changes that may or may not have been made so as to alert the reviewers of a revised draft.

(2) Where substantial differences or misunderstandings occur, the author should explain his/her views in more formal comments in a memorandum attached to the revised draft of the manuscript. Informal consultation and discussion between reviewers and author are highly desirable in order to clarify points of view and to facilitate agreement when significant differences arise.

(3) The review process is repeated until the author feels that the proposed publication is ready for submission for internal administrative and final technical review. At this point, statements of concurrence and the signature of the designated peer reviewers should be attached to the text. In cases where the author has not reached a consensus with the reviewers, comments on the nature of their differences, prepared by the reviewers, should be attached to the text and transmitted to the next administrative level for review and approval.

d. Administrative and Final Technical Review.

(1) The prepared publication should then be submitted to the office director level for review. This office is expected to provide final approval for technical and scientific soundness and overall organization and presentation of data. Refusal at any level of management to approve a document may be appealed once to the next higher level of management.

(2) At this level, or if appropriate at a lower level, a memorandum outlining any expenditures, and sources of funds or priorities, or unusual conditions should be attached. This memo should also include plans for publication, dates, and the anticipated number of copies, as well as the purpose of the publication, the intended audience, a full description of the proposed format (i.e., size, number of pages, design and color) and/or a mockup of the finished product.

(3) The publication and accompanying memorandum then move to the Associate, Assistant or Regional Administrator or the appropriate Staff Office Director in the Office of the Administrator who has final authority on deciding whether the document is a "major" document which then must be reviewed by the Science Advisor and the Office of Public Affairs. A "major" document is:

- any material of any cost that has policy implications or contains scientific or technical uncertainties. The Associate, Assistant, or Regional Administrator, or Staff Office Director within the Office of the Administrator in whose program, region, or office the document originates, is responsible for determining if a report has policy implications;
- any product from a project funded at \$50,000 or more;
- any single product that costs \$10,000 or more to print;
- any category or series of reports that costs \$25,000 or more a year to print; or, .
- any periodical as defined by OMB Circular A-3.

All minor documents should be carefully examined before publication. The Associate, Assistant, or Regional Administrator or Staff Office Director in the Office of the Administrator is responsible for these minor documents as to their technical and scientific credence and quality.

(4) Major documents will be copied and submitted to the Science Advisor and to the Office of Public Affairs. These individuals, or their designated representatives, will review the manuscript on behalf of the Administrator. The Science Advisor or Director of OPA may send manuscripts related to policy issues to other senior officials in the Agency for additional internal review. Those manuscripts of a complex technical nature may be sent to selected experts outside the Agency for confidential review. Certain types of documents may not require full review by both the Science Advisor and OPA because no issues related to their respective review arise; in these cases, either the Science Advisor or OPA will quickly review and approve the document.

(5) The Science Advisor, or his designate, will review documents for general scientific and technical content, clarity, logic, consistency, soundness of conclusions, organization and scope, presentation and quality of data, validity of analytical techniques and overall conformity with research, policy, and publication aims of the Agency. The Science Advisor will develop systems for review, for report of comments to the author, and for notifying program areas of the final decision regarding the publication.

(6) The Office of Public Affairs will review both technical and non-technical information materials for conformity with EPA's Public Information Policy and Graphics Standards System. The Office of Public Affairs will oversee the entire publication and printing system for major documents of the Agency to ensure consistency and to avoid duplication. The Office of Public Affairs will also be responsible for determining the mechanical matters of distribution, manner of printed presentation, conformity to budget requirements, and overall consistency with Agency goals.

(7) Papers prepared for publication for outside journals are returned to the author after approval by the Science Advisor. Each administrative office that participated in the review process will be notified of this action. The author is responsible for mailing the text to the outside journal and for supplying appropriate offices in the Agency with depository copies. At this point the author is also free to release the paper to the general public if so desired.

(8) The final manuscript must be approved by both the Science Advisor and the Director, OPA. Following such approval, the manuscript is returned to the author, and each administrative office that participated in the peer review will be notified of this action.

(9) In the event of an unfavorable review by OPA and/or the Science Advisor, the manuscript is returned to the originating office or the author as is appropriate. All comments should be addressed and necessary revisions made.

e. Products of External Contracts and Grants.

(1) Informational materials, reports, and other products produced under an EPA contract, grant, or cooperative agreement must go through a comparable system of review prior to their release to the public as an EPA publication or product. The Project Officer is responsible for insuring that adequate internal EPA review consistent with the rights and data clauses of EPA contracts, grants or cooperative agreements is conducted, including approvals by appropriate Associate, Assistant, or Regional Administrators or Office Directors within the Office of the Administrator, and the Science Advisor and Office of Public Affairs. Grant officers developing grants which involve public information/public participation activities should encourage the use of cooperative agreement grants which enable EPA to require the grantees to submit their material for review and/or approval prior to its completion and distribution.

(2) On the other hand, EPA encourages the independent publication of the results of its contract and grant research in appropriate professional journals. When an author receiving a contract or grant from EPA sends out a paper for publication, a courtesy copy should also be sent to the EPA Project Officer who will forward it to the appropriate Office Director, Associate, Assistant, or Regional Administrator, and the Science Advisor. Following publication, copies of the journal paper must be submitted to the Science Advisor and to other addressees in quantities as may be directed by the Project Officer. Provisions to ensure EPA receipt of journal papers by contractors or grantees must be included in research agreements.

Anne M. Gorsuch
Administrator

Questions submitted by Senator Baucus

- Q. 7. It has been reported that as part of budget reductions to the Research and Development program, laboratories in Cincinnati and Triangle Park, North Carolina will be closed. Would you please comment?
- A. 7. Fiscal year 1982 budget reductions required the Office of Research and Development (ORD) to abolish its Health Effects Research Laboratory in Cincinnati; to establish, in Cincinnati, a 70-person Toxicology and Microbiology Division that reports to the Health Effects Research Laboratory at Research Triangle Park, NC; and to close the Newtown (Ohio) Fish Toxicology Station.

The elimination of the air inhalation toxicology studies on diesel emissions and of the chronic disease epidemiologic research necessitated a reduction in the size of ORD's health effects research effort in Cincinnati from an 108-person laboratory to a 70-person division.

The Newtown Fish Toxicology Station's functions will be accomplished by a small staff (reduced by 4 positions) completing the Complex Mixtures Research Program at another ORD site in Cincinnati and by the consolidation of its environmental effects research at its parent laboratory, the Environmental Research Laboratory in Duluth, MN.

No laboratory closings in Research Triangle Park, NC, resulted from the 1982 budget reductions. However, the Health Effects Research Laboratory in RTP is now undergoing a reorganization to accommodate reductions in the health effects research program.

Questions submitted by Senator Sarbanes

- Q. 1. Is the Agency planning to close the Beltsville Biological and/or Chemical Laboratories within the Office of Pesticide Programs?
- A. 1. Consistent with the President's programs and policies, the Environmental Protection Agency (EPA) is seeking ways to improve efficiencies and eliminate duplication wherever possible. Biological testing of pesticides by Agency personnel is one area where such efficiencies can be realized without loss of data. While this particular testing activity will be phased out, the Beltsville facility itself will not be closed.

Questions submitted by Senator Sarbanes

Q. 2.(a) What cost savings are anticipated from closing the laboratories?

- A. 2.(a) 1. FY-81 costs of operating the biological laboratories were \$600K.
2. Those costs were distributed between salaries/expenses. Salaries were approximately \$546K and expenses \$54K.
3. Savings could be recognized in FY-82 by closing the biological laboratories. The date those laboratories are closed would determine the magnitude of the savings. If that laboratory were closed on January 1, 1982, it would be possible to save approximately \$469.6K.

4. Those salaries/expenses were determined as follows:

A.	Salaries adjusted for 4.8% increase ($\$546K \times 0.048 = \$26.2$)	\$572.2K
	($\$546.0K + 26.2K = \$572.2K$)	
B.	Operating Expenses (other than salaries	54.0K
	<u>(No increase from FY-81)</u>	
		\$626.2K

5. Savings would be determined by deducting costs of operations between October 1, 1981 - January 1, 1982 from the total (\$626.2K). If we assume salary/expenses are linear for the entire year, then approximately 25% of the total would be expended in this period.

Therefore, the savings would be $\$626.2K \times 0.75 = \$469.6K$

Q. 2.(b) Over what period of time will the estimated savings be realized?

- A. 2.(b) Those savings (\$469.6K) will be realized for the balance of FY-82.

Questions submitted by Senator Sarbanes

- Q. 3. Without in-house laboratories, how does the Agency plan to gather the data necessary to assess the safety and efficacy of pesticides, herbicides, rodenticides and disinfectants? Are the testing activities to be carried on by other laboratories, or eliminated entirely?
- A. 3. The Agency is committed to finding efficiencies in implementing our Congressional mandates, and I believe that biological testing can be carried out by testing facilities other than those maintained by the Government. The pesticide law, as you know, puts a burden on industry to ensure that their products are efficacious, and we believe that this responsibility, coupled with activities of entities such as independent laboratories, hospitals, or other medical testing facilities, will continue to protect public health from products which do not perform as claimed.

Questions submitted by Senator Sarbanes

- Q. 4. If some or all of the testing is to be contracted to private labs, what assurances are there that those labs can be relied upon to conduct unbiased testing and evaluation? Is there not a danger that private labs, who depend on manufacturers for much of their business, will be tempted to produce results acceptable to those manufacturers? Is it prudent to rely on possibly biased information to make decisions affecting public safety?
- A. 4. As we explore alternative procedures for assuring the performance of public health pesticides, we have and will continue to work with other Federal and State agencies and with public health organizations that have similar interests regarding efficacy in order to assure product performance. However, it should also be noted that FIFRA places the burden for testing all pesticides products on the regulated industry, and the preponderance of data is now generated by industry, or industry-paid laboratories. That data is reviewed by the Agency as part of the overall regulatory process, but for the most part relatively little new data is generated by the Agency. Additionally, EPA in cooperation with FDA maintains a laboratory audit program to evaluate the performance of laboratories that contribute to the FIFRA regulatory process.

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STATEMENT ON THE DISMANTLING OF EPA
SUBMITTED TO
THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
OF THE UNITED STATES SENATE
BY
JONATHAN LASH, STAFF ATTORNEY, NRDC

October 15, 1981

The Environmental Protection Agency (EPA) administers 16 federal laws that protect Americans from pollutants in the air we breathe, the water we drink, the food we eat, and the land we live on. Together these statutes are the backbone of environmental, safety, and health protection in the United States. Now, however, under the rubric of budget cuts and regulatory reform, the EPA is, quite literally, being dismantled. Career professionals are being driven from the Agency. Enforcement actions have all but ceased. Health and safety research has been decimated. Major regulations have been suspended, modified, or are slated to be changed. Decisions are made after closed-door sessions with industry and without the opportunity for public participation. The danger is not simply that environmental progress will be slowed, but that the entire legal and institutional framework for environmental

protection will be destroyed, and human beings will suffer death and disease as a result.

EPA - Founded in Necessity

The EPA was created by President Nixon in 1970 in the aftermath of Earth Day. He stated in his reorganization message creating EPA that only by governmental action "can we effectively ensure the protection, development and enhancement of the total environment. . . ." In creating a single federal agency, he recognized that "for pollution control purposes the environment must be perceived as a single interrelated system"

Soon after EPA was established, its responsibilities began to increase. Strong clean air legislation was passed within months; clean water legislation a year later. These statutes required EPA to undertake regulatory programs unprecedented in breadth and significance, establishing and enforcing pollution control standards for thousands of sources. At the same time, EPA was required to oversee the development of state programs to comply with portions of these acts.

By the mid-1970s the Nation had begun to recognize another hazard - toxic pollutants. While conventional pollutants were beginning to be subject to regulation, discharges of other substances, cadmium, lead, mercury, arsenic, polychlorinated biphenyls, hydrocarbons, and hundreds of others, were not controlled. The quantities of these substances discharged were less than of the conventional pollutants, but it began to be apparent that their potential effects on human health were

profound. Many are carcinogens, mutagens, teratogens, or are associated with heart, liver, or kidney disease. Soon Congress strengthened both the clean air and clean water legislation to require EPA to deal with toxics and added hazardous waste legislation and the Toxic Substances Control Act to mandate further action by EPA.

The workload entailed by this new legislation is awesome. Seventy thousand chemicals are now manufactured in the United States. The number will double by 1987. There are 15,000 active hazardous waste disposal sites and 3,000 abandoned sites. Thousands of industries discharge or manufacture products that cause the discharge of toxic substances. Health effects data for most substances is sketchy at best. Little monitoring of existing levels of pollution has been done. EPA must develop standards based on scientific evidence, train staff, and begin to seek industry compliance.

The new responsibilities, combined with increases in the burden of regulation of conventional pollutants, mean that EPA's workload will more than double between 1980 and 1984. In each area EPA has struggled to meet its complex statutory responsibilities. Its efforts have required sophisticated scientific and technological analysis and difficult policy decisions. EPA's efforts generated inevitable controversy. Some industries have bitterly resisted EPA's efforts and have often sought, and sometimes won, exemptions or delays through Congressional action. Environmental groups have criticized EPA for moving too slowly and compromising too much. During

the past decade, NRDC has litigated dozens of lawsuits challenging EPA's failure to act as swiftly or stringently as Congress required.

Yet over the past decade EPA has won the respect of industry and environmentalists alike. Criticism and political rhetoric notwithstanding, the agency has been acknowledged to be among the most vital, independent, and professional of all the major federal agencies. It has also been among the leanest of agencies. EPA had in 1980 the lowest number of lawyers per major regulation administered and the fewest administrative managers per 100 employees.

Dismantling EPA

During the past nine months, EPA efforts to meet the obligations imposed by statute have shuddered to a halt. Work already done has been torn down and the agency has begun to disintegrate.

Budget

Despite its sharply increasing workload, the EPA budget has been cut 20% in Fiscal Year 1982. New 1982 cuts are planned. The latest figures we have obtained indicate inflation-adjusted cuts of nearly 75% will be imposed by FY 1984. Every area will be drastically curtailed, including the implementation of new programs, the enforcement of existing ones, and technical assistance to the states - the supposed surrogates for a dormant EPA.

EPA health and safety research will virtually cease.

This is the research upon which future regulatory decisions should be based - evaluating the effectiveness of existing programs, expanding our knowledge of the effects of conventional and toxic pollutants on human health, and developing new control technologies. Ongoing research on diesels, automobile emissions, synthetic fuels, and hundreds of new chemicals has been abruptly halted. The EPA research labs will be closed. University research contracts will be terminated. Historically almost all significant environmental and occupational health and safety research has been carved out by the government, with government support, or pursuant to specific regulatory requirements. Industry has little economic incentive to pursue such research on its own. Without research and data collection, health protection is impossible.

Personnel

The Administrator of EPA, Anne Gorsuch, regards the EPA professional staff with suspicion and hostility. Senior staff members have been fired or transferred. Decisions are made by a group of half a dozen political appointees who refuse to have contact with, let alone consult, the career professionals in the agency. A recent decision to reverse a staff recommendation that EPA take the action required by law to protect the public from formaldehyde and DEHP, identified carcinogens, was made by the Deputy Administrator after extensive private contacts with industry, but not the EPA staff. Similar abrupt and unexplained changes of technical positions have occurred with respect to hazardous wastes, fuel additives, and clean air legislation.

Half of the top managerial positions at EPA remain empty. The two Associate Administrators (new posts created by Ms. Gorsuch and filled by the Administration) have been forced to resign when they differed with Ms. Gorsuch's approach to agency management.

Attrition among the EPA professional staff now exceeds 1% per month. These are the best of the staff, many of them first employed at EPA under the Nixon and Ford Administrations.

Program

In almost every area of its responsibilities, EPA has or is preparing to weaken pollution control standards. For example, in the past 9 months, EPA has initiated:

- modification of health-based primary air quality standards for sulphur dioxide and nitrous oxides;
- a 300% increase in the permissible particulate pollution level;
- relaxation of truck and auto pollution standards;
- a delay in the timetable for the removal of lead in gasoline (an action that will have its greatest impact on inner city children);
- major weakening of the hazardous waste disposal regulations and licensing requirements;
- withdrawal of programmatic regulations for the control of toxic discharges into sewage facilities (that are equipped to treat toxics).

At the same time, EPA has slowed or abandoned its efforts to implement the new programs to control public exposure to toxics under the Clean Air Act, the Clean Water Act, the Toxic

Substances Control Act, and the Superfund legislation.

Enforcement

Early in her tenure, Ms. Gorsuch reorganized the EPA enforcement staff. Since that time, enforcement actions have declined precipitously. EPA regulates some 40,000 pollution sources. Since Ms. Gorsuch was confirmed, EPA has initiated 12 enforcement actions.

Conclusion

Within the next two years, if these plans go forward, EPA will cease to function. The Nation's environmental statutes will be rendered meaningless. There will be a direct impact on human health. Inevitable economic forces will drive states to compete for new industry by touting their law environmental standards, and industries to compete with one another by avoiding "nonproductive" environmental control expenses. (Industries that have complied in good faith will lose out.) These are the forces that lead to federal environmental legislation in the first place.

As then Professor Murray Wiedenbaum wrote:

... persons living along a river downstream from a polluting factory may have to endure poor water quality when the factory dumps wastes into the river. The Environmental Protection Agency, however, has the regulatory power to enforce the use of less polluting waste disposal systems, thus lessening the involuntary burden placed on the factory's neighbors.

In the absence of governmental intervention, voluntary action to deal with such problems may place a firm under a competitive disadvantage. The specific company attempting to correct a situation such as the one just described would tend to bear the full costs, while the benefits of the improvement would be widely dispersed in

the society. "Free riders," or firms which do not make the expensive changes, may nevertheless share in the benefit. An example of this situation is provided by the regulation of pollution standards in the motor vehicle area. The basic justification given by government for setting such standards was clearly stated by a senior executive of a major automotive manufacturer:

... a large part of the public will not voluntarily spend extra money to install emission control systems which will help clean the air. Any manufacturer who installs and charges for such equipment while his competition doesn't soon finds he is losing sales and customers. In cases like this, a government standard requiring everyone to have such equipment is the only way to protect both the public and the manufacturer.*

Even if the trend changes, it will take years to rebuild the EPA's staff and credibility, and still more years to renew the efforts now consigned to the ideological garbage can.

It is in no one's interest that this should happen. The public will be harmed and industry will once again face massive uncertainties about future regulatory requirements. We urge this Committee to demand that EPA comply with the law and follow the course charted by this Committee, the Congress, and Presidents Nixon, Ford, and Carter.

* Weidenbaum, Business, Government and the Public at 12-13, footnote omitted.